***United States Court of Appeals***

***for the Second Circuit***

# JOINT APPENDIX

# 76-7161

## United States Court of Appeals
### FOR THE SECOND CIRCUIT

**Docket No. 76-7161**

FLM COLLISION PARTS, INC.,

*Plaintiff-Appellee-Cross-Appellant,*

—against—

FORD MOTOR COMPANY and
FORD MARKETING CORPORATION,

*Defendants-Appellants-Cross-Appellees.*

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
**(D.C. 73 Civ. 713 (T.P.G.))**

## EXHIBITS TO JOINT APPENDIX

UNITED STATES COURT OF APPEALS
FILED
MAY 18 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

**EXHIBIT VOLUME I**

**Plaintiff's Exhibits**

(Counsel Listed on Inside Page)

PAGINATION AS IN ORIGINAL COPY

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PX 9 Letter by Thomas C. Page to all Ford dealers, November 17, 1969

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TAY

Thomas C. Page
General Manager

Autolite-Ford Parts Division
Ford Motor Company
P.O. Box 3000
29500 Plymouth Road
Livonia, Michigan 48151

November 7, 1969

To: All Ford and Lincoln-Mercury Dealers

Subject: Federal Trade Commission's Position on Crash Parts

Ford Motor Company received recently the attached letter concerning crash parts from Rufus E. Wilson, Chief, Division of General Trade Restraints of the Federal Trade Commission.

For some time, the Federal Trade Commission has sought a means of assuring that independent body shops could buy crash parts at prices that would enable them to compete equally with franchised dealers in bidding on the repair of damaged cars. In response to the urging of the Commission, Ford Motor Company announced, on November 1, 1968, the establishment of a wholesale incentive on crash parts. Since that time, the Commission has been evaluating the effectiveness of the program and, as indicated in Mr. Wilson's recent letter, they believe the objectives of the Commission are not being met in some market areas.

As independent businessmen, dealers are free to sell parts purchased from Ford at any price they so choose. Our purpose in relaying to you the Commission's concern, however, is to make you aware that the Commission may take further action should they decide that the present wholesale incentive plan is not achieving the Commission's goal. One possible course would be for the Commission to file a complaint against Ford Motor Company in an effort to compel the Company to sell crash parts directly to independent body shops and independent wholesalers. We sincerely hope that the Commission does not find it necessary to seek such an action.

May we ask that each dealer review the crash parts pricing practices of his dealership and assure himself that his pricing policy is in the best long-run interest of his dealership.

Very truly yours,

Thomas C. Page

attachment
337
ACFLS

2e

FEDERAL TRADE COMMISSION

WASHINGTON, D. C. 20580

Bureau of Restraint of Trade

SEP 16 1969

Robert W. Scott, Esq.,
Associate Counsel,
Ford Motor Company,
The American Road,
Dearborn, Michigan 48121

Re: File No. 661 0121

Dear Mr. Scott:

Our continuing investigation into the operation of the Wholesale Incentive Plan adopted by Ford Motor Company effective November 1, 1968 on passenger car sheet metal and related "crash" parts, reveals that in many parts of the country these parts are not being made available to independent body repair shops at prices which will permit such independents to compete with franchised dealers in bidding upon the repair of damaged automobiles.

As you know, Ford Motor Company has assured the Commission that it would take necessary action within the scope of applicable antitrust law, to make its "crash" parts available to all body repair shops at the same prices. This assurance was given after the Commission advised Ford Motor Company that the distribution of "crash" parts to independent body repair shops at higher prices than those charged to the body repair shops of its franchised dealers violated Section 5 of the Federal Trade Commission Act. Rather than litigate the matter, the Commission and Ford Motor Company considered two alternative solutions to the problem.

(1) Ford Motor Company would sell "crash" parts from its regional depots to independent body repair shops as well as auto parts wholesalers and jobbers servicing such body repair shops, or,

(2) Ford Motor Company would offer wholesale incentive payments to its franchised dealers to compensate them for the distribution of "crash" parts to the general trade.

The matter was resolved when the Commission accepted Ford Motor Company's assurance that it would implement a Wholesale Incentive Plan that would make its "crash" parts available to all body repair shops at the same prices.

I believe that sufficient time has now elapsed so that your company's Wholesale Incentive Plan should be receiving wider acceptance than it now is in many parts of the country. Consequently, I believe that Ford Motor Company should now give serious consideration to its position and if necessary, make provisions to sell "crash" parts directly to independent body repair shops and to auto parts wholesalers and jobbers, in those areas where the company's Wholesale Incentive Plan has failed to achieve its objectives.

I request your prompt attention to this matter for the purpose of accomplishing your company's assurance to the Commission with respect to making your company's "crash" parts available to all body repair shops at the same prices.

Very truly yours,

Rufus E. Wilson,
Chief, Division of
General Trade Restraints.

PX 10 Letter from Kramer of Central Lincoln-Mercury ("Central") to Frank D'Angelo, September 20, 1968

4e

# Central Lincoln Mercury Corp.

COMET - LINCOLN - MERCURY

SHOW ROOM
2001 CONEY ISLAND AVENUE
(NEAR KINGS HIGHWAY)
BROOKLYN 23, N. Y.
DEWEY 9-5500

SERVICE-PARTS-ACCESSORIES
919 QUENTIN ROAD
USED CAR DEPT.
1592 CONEY ISLAND AVENUE
CLOVERDALE 8-6969

September 20, 1963

Mr. Frank D'Angelo
Ass't. Sales Manager
New York District
Autolite Division
Ford Motor Co.
Teterboro, N. J.

Dear Mr. D'Angelo:

In March of 1965 through the good offices of Joe Collura, we were put in touch with Steve McKee and John Andidero, two former parts managers at Ford Dealerships. As a result, an association developed wherein they incorporated and are known as FLM Collision Parts, Inc., 416 Saw Mill River Rd., Yonkers, N. Y.

As agreed, FLM is authorized to purchase parts using our credit facilities, all charges being made to our parts account, thus putting them competitively in the wholesale parts business. From this arrangement certain financial benefits flow.

Today, the volume of business FLM transacts on our account is well over $250,000 annually and the attendant paper work is overwhelming. Furthermore, more often that not, their back orders are shipped to us and quite often their stock orders are comingled with ours and are delivered to our door. This necessitates a trip from Yonkers to Brooklyn or vice versa, making us all quite unhappy.

I am writing now in hope that these considerations will convince the Autolite Division that separate code numbers for FLM and Central Lincoln Mercury will go a long way towards saving time, energy and expense and certainly improve customer relations (for we are your customer.)

BEST COPY AVAILABLE

We hope you will see your way clear to granting us this sorely needed relief.

Very truly yours,

CENTRAL LINCOLN MERCURY CORP.

H. S. Kramer

H. S. Kramer
General Manager

HSK:lr

BEST COPY AVAILABLE

PX 11 Memorandum from McKeever to Stevens, September 30, 1968

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
X12-D



PX 11

September 30th, 1968

To: Mr. Guy Stevens
Operating Method & Systems
Detroit Parts Depot

Subject: Request for Second Parts Code -
Dealer Central Lincoln-Mercury Corp.

Mr. H. Kramer, General Manager of subject dealership has requested our assistance to secure a second parts code to be utilized for their extensive wholesale parts operation.

The wholesale parts operation is maintained at a separate location; 416 Saw Mill River Road, Yonkers, New York. The volume of business the wholesale parts outlet transacts is well over $200,000 annually; consequently, Mr. Kramer wishes to maintain it as a separate operation.

The additional code is required to facilitate the physical handling, billing and complexities involved in this high volume business.

Your favorable consideration and approval of this request will be appreciated.

E. E. McKeever
New York District Sales Manager

for

BEST COPY AVAILABLE

PX 14 Memorandum from Soper to Rowlands, November 6, 1970

7e

(PX14)

Ford

GENERAL AUDITOR'S OFFICE

November 6, 1970

To: Mr. M. J. Rowlands
General Sales Manager

Subject: Audit Report No. AF 70-33 - Central Lincoln-Mercury Corporation
Brooklyn, New York

At your request, an examination has been made to determine the relationship between Central Lincoln-Mercury Corporation, 2001 Coney Island Avenue, Brooklyn, New York, a franchised Lincoln-Mercury dealer in the New York Sales District (Dealer Parts Code 11283) and Central Lincoln-Mercury Corporation, 1110 Saw Mill River Road, Yonkers, New York (Dealer Parts Code 13430). We also reviewed claims paid to both locations under the wholesale parts incentive program.

Expenditures

| Wholesale Parts Incentives | Year-to-Date 8-31-70 | 1969 | 1968 |
|---|---|---|---|
| Brooklyn (Dealer Parts Code 11283) | $ 1,113 | $ 10,096 | $ 11,723 |
| Yonkers (Dealer Parts Code 13430) | $ 55,679 | $ 30,877 | None |

| Audit Data | Current Audit | Previous Audit |
|---|---|---|
| Completion of Field Work | October 9, 1970 | October, 1969 |
| Dealer | N. Gordon | |
| District Sales Manager | J. R. Rose | |
| Auditor-in-Charge | W. E. Larson | |
| Recommended Chargeback | None | $4,049 |

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Summary of Examination

Our review was performed during the week of October 5, 1970. Wholesale parts incentive claims submitted under both dealer parts codes for the eleven months ended October 31, 1970, were tested and found to be generally accurate, properly supported, and submitted in accordance with the provisions of the wholesale parts incentive program.

We determined that the Central Lincoln-Mercury Corporation, Brooklyn, New York (11283) is a properly franchised Lincoln-Mercury dealership in the New York Sales District. This corporation requested and obtained, in 1968, a second dealer parts code (13430) under its own name but listed a Yonkers, New York address as its principal place of business. This second parts code was to be utilized ostensibly for Central's extensive wholesale parts operation in Yonkers. Actually, Central, itself, does not sell wholesale parts in Yonkers, but rather sells parts to a volume body parts account at the Yonkers address which is FLM Collision Parts, Inc., a privately-owned body parts wholesaler.

Because of FLM's high volume of business, and for convenience in ordering, shipping and accounting, Central and FLM have an arrangement in which Central's second dealer parts code (13430) is used exclusively for parts purchased for resale to FLM. Shipments are made directly to FLM at the Yonkers address, or are physically picked up by FLM at the New York Parts Depot. For this service, Central bills FLM at dealer net plus 3%. POPP credits generated by the second parts code are generally split 50/50 between the two as needed. Wholesale parts incentives are applied for by Central Lincoln-Mercury.

Recommendation

Since FLM is independently owned and merely another parts customer of Central Lincoln-Mercury Corporation, the second dealer parts code (13430) should be recalled and cancelled. Also, the dealer should be advised of alternate methods to properly and adequately supply his customer.

H S Soper

H. S. Soper, Manager
Supplier and Dealer Auditing Department

PX 17 Handwritten memorandum from Garth V. Gilpin (undated)

Ex 1-5

Central Lincoln-Mercury Inc.
Brooklyn, New York.
Audit of Wholesale Following Incentive Claims-F.L.M.

Central Lincoln-Mercury Inc. has a unique parts operation. The parent company is located in Brooklyn and the wholesale business is located in Yonkers-37 miles away. Central L-M has two parts accounts so that it lessens the chance of mix ups occurring in dispatch and ~~_____~~ charges made to these separate operations by Ford Motor Co.

The wholesale business (F-L-M Collision) is owned by the gentlemen who have an interest in Central L-M. Central L-M has no interest in F.L.M. Collision other than there is a 3% charge on the cost of all parts purchased from Ford Motor Co. by F.L.M. Collision. There are no direct dealings between these two operations. Central L-M also wholesales parts from the Brooklyn location but the volume is considerably smaller.

F.L.M. Collision is a ~~balance~~ about 100% wholesale the owners do not invite retail business. Their basic customers consist of collision shops and service stations. Only 75% of their business is in their retail body parts. Information was not available in F.L.M. Collision on the Exchange of Ford and L-M Dealers in the immediate trade area, ~~of~~ the establishment of a separate location by a dealer in another area, who ~~_____~~ is that ~~_____~~ in direct competition with these dealers.

Discrepancies Disclosed

| Reason | # Claims | Amount |
|---|---|---|
| Credit Sales-Not Included | 106 | # 716.65 |
| Sales to Ford & L-M Dealers | 203 | 1414.33 |
| Audit Overstated | | # 213095 |

Martin A. Rich
Auditor
L-M Division

Total Amt. 2130.98

[illegible] = 1430

Central Lincoln-Mercury Inc.
Brooklyn, New York
Audit of Wholesale Filing Incentive Claims - Central

An audit of wholesale filing claims made by Central Lincoln-Mercury in the months of June, July, August 1969 revealed 17 discrepancies totaling $54.25. They are detailed below.

| Reason | # Claims | $ Amount |
|---|---|---|
| Credit Slips. No refund issued | 1 | $ 9.76 |
| Slips to Ford & Lin Dealers | 15 | 44.01 |
| Slips to Dealer-owned business | 1 | .48 |
| Total Amount Overstated | | $ 54.25 |

PX 32 Memorandum from M. L. Hughes to Rowlands, November 2, 1972

PY 32

11e

M. L. Hughes

November 2, 1972

Mr. M. J. Rowlands

This is the file that I discussed with you on the telephone and we are holding up any action until we hear from your office.

After your review could you please return the book.

M. L. Hughes

PX 32

12e

**Ford Marketing Corporation**
Inter Office Communication

Ford Parts Division
New York District Sales Office

November 1st, 1972

Mr. M. L. Hughes
Northeastern Regional Sales Manager

cc: Mr. J. J. Collins, New York District Sales Manager, L-M Division
Mr. F. D'Angelo, Asst. N. Y. District Sales Manager, FPD
Mr. F. R. ~~Ascione~~, Field Sales Manager, FPD

SUBJECT: ATLAS L-M INC.
BROOKLYN, NEW YORK
CUSTOMER CODE 11285

WHOLESALE INCENTIVE REBATES

Atlas L-M became a dealer effective July 15th, 1972, replacing Central L-M Corp., customer code 11283. On October 25th, 1972 the writer was informed that the subject dealership was engaged in sales to, and reporting for wholesale incentive:

FLM Collision Parts Inc.

416 Saw Mill River Road

Yonkers, New York

Since FLM is not eligible as a wholesale customer of the dealership under the terms of our policy manual bulletin #900, page 3, item D and G, and the volume of business in crash parts amounts to between $30,000 to $40,000 per month at dealer net prices, the incentives applied for by this dealership since its installation would amount to approximately $24,000.

It is our understanding with the Field Accounting Department that none of the claims have as yet been paid. I discussed this matter with Mr. J. J. Collins, New York District Sales Manager, Lincoln-Mercury Division, and it was mutually agreed to contact the dealer on October 31st.

On October 31st, as indicated, we visited Mr. Dave Pollack, the dealer principal, and he stated his position with regard to the incentives claimed as follows:

1) At the time he bought the dealership, it was his understanding that this account (FLM) was a valuable wholesale customer of Central L-M and that Central L-M had an arrangement with this account to sell them at the dealer net price less

.....

incentives plus 3%.

2) In his discussions with Ford Motor Company personnel, it was his understanding that FLM was a valuable account and that the Company wished to retain the business.

3) That by continuing in this arrangement with FLM, he was assisting the Company in its business and was merely following an established precedent.

4) In view of the precedent established, and the indications which he felt reflected a genuine interest on the part of the Company personnel in maintaining this business that he could not accept the fact that these sales were not eligible.

I pointed out to Mr. Pollack that we understood his position but in light of the Company policy, wholesale incentives on sales to this account could not be approved regardless of what appeared to be a precedent established by the former dealership. I proposed that Mr. Pollack seek recourse from FLM and that we would extend to the dealership a note payment for an extended period of time in order for the Company to maintain its policy without penalizing the dealership too severely. Mr. Pollack said he would not be interested in this proposal in any regard. He said he had discussed the payments of incentives with the former dealership managers; and in view of the precedent, felt he was being penalized. and therefore could not accept the chargeback.

I pointed out that the former dealership was audited on two occasions and was counseled at that time on the manner in which sales to independent body shops, etc. could be eligible. I told Mr. Pollack that in view of these facts, I saw no alternative but to follow the Company policy in this regard.

Mr. Collins indicated that he was not sure that I was correct in my position and that he would look into it on his return to his office and would get back to Mr. Pollack.

A call was made to our incentive control department which indicated that Central L-M, customer code 11283, had been applying for incentive rebates in the amount of approximately $7,000 per month from January through July, 1972, i. e., January $7,372, February $7,428, March $7,403, April $7,707, May $6,918 and June $7,291.

Based on their sales rate, it would appear most of these incentives were in fact based on sales to FLM. Contingent upon this information, the attached wire, Exhibit A, was sent to Mr. W. E. Davis, Field Accounting Department, requesting that the credits due this account, Central L-M, $9,259.00, be held until further notice. In checking with our Depot, it was determined that FLM was in fact picking up on a will-call basi from the Depot without written authorization

.....

from the dealership. This was confirmed in the conversation with Mr. Pollack and the Depot was advised to immediately stop supplying FLM unless prior written approval was secured from the dealership.

In summary, I believe that Mr. Pollack acted in good faith and that what he says is true. However, in order to retain a credible posture in this marketplace in view of the other charge-back audits; as a result of sales to brokers, etc., a chargeback for these sales made by Atlas must be applied.

In view of the unique business in which FLM is engaged, it is my opinion that the dealer can secure recourse from FLM but only if FLM is prevented from establishing a similar working relationship with another dealer or dealers in the marketplace. In this regard, I received a phone call this afternoon (10/31) from Mr. David Wasser of 250 West 57th Street, New York, New York, (212) CI6-3880, the attorney and accountant for FLM Collision Parts, who indicated that FLM was in a very serious business condition as a result of being unable to procure parts from the Depot, that the Company was in a weak legal position since we had allowed wholesale incentives to be applied for and passed on in the past and recommended a meeting as soon as possible with the principals of FLM.

I indicated to Mr. Wasser that our only business relationships were with our dealers and any negotiations would have to be carried out through our dealers but that I would discuss the matter with Mr. Pollack and cordially left the matter at that point.

Another consideration in this matter is that another dealership is indirectly involved. A review of the attached file on the Multiple Dealer Code Study in the New York District completed on May 20th, 1970, indicates that FLM originally had a separate parts code at the request of Central L-M which was established in 1968. The secondary code was cancelled. However, the matter was brought to light originally as a result of a request by Park-view L-M, Inc. of Yonkers, New York which requested a separate code through their dealership also for FLM. Mr. D'Angelo's contact report of February 11th, 1970 on Parkview L-M included in this file discusses Mr. Vogel's approach to requesting a second code. On September 11th, 1972, a chargeback in the amount of $2,170.02 was applied to the dealer account for sales to other dealers and to Bernard's Auto Parts, an operation performing in exactly the same manner as FLM.

We learned today that Mr. Vogel's, Parts Manager, had called the Depot and requested that unit down orders being held for FLM on the Atlas L-M parts code be applied to his code in order that FLM could pick up the needed parts under his code.

.....

I believe that in order to assist Atlas L-M in securing a recourse for the incentive monies involved, that Mr. Vogels should be informed that FLM is not an eligible wholesale customer and have taken this action by phone on October 31st. By taking this action, it is assumed that FLM will be forced to negotiate a settlement with Atlas L-M which will eliminate the necessity of the new dealer taking a financial loss.

I request your review of this matter and would appreciate any recommendations you would care to make relative to assisting Atlas L-M in the handling of this chargeback and in the manner in which we should proceed with regard to Central L-M and recovering any monies due the Division for incentives claimed to this account in the past.

J. R. Rose
New York District
Sales Manager

JRR/lvf

Attachments

TELEGRAM

FOR TELETYPEWRITER USE

| REQUESTED BY | DEPARTMENT NAME & NUMBER | |
|---|---|---|
| J. R. ROSE 16e | AU032325 | ☐ REGULAR ☐ FOLLOWING AM ☒ TODAY SURE ☐ MAILGRAM |

| OPERATOR | TIME AM PM | STAFF OR DIVISION | TELEPHONE | DATE |
|---|---|---|---|---|
| | | N.Y. District Sales Off.-F.P.D | ext.210 | 10/30/72 |

Mr. W. E. Davis
Field Accounting Dept., DPD

cc: Mr. A. Buszka
Credit Dept., DPD

Subject: Central L-M Corp., code # 11283

As per my phone call this A.M. you will place on hold until further notice subjects 10/25/72 statement credit balance of $9,259.

J. R. Rose
N. Y. District Sales Manager

GSD JUL 68 3502-2

PX 33 Handwritten statement by Soper to Rowlands
(undated)

To. [illegible]
General Steel Manager

Subject Audit Report No. AT Chrysler Lincoln-Mercury Corp.
Brooklyn, New York

An examination has been made of Chrysler Lincoln-Mercury Corp., 200 Jonas Island Avenue, Brooklyn, New York, a franchised Lincoln-Mercury dealer in the [illegible] District. The examination also included a review of Floor Decision Point Inc., located at 445 Saw Mill River Road, Yonker, New York which records were billed and shipped to Chrysler Lincoln-Mercury at the factory. An analysis of the documentation was made at the Regional Office of the Audit Force Sales Division to ascertain the current status of the TUD operations. Inasmuch as a separate TUD operations audit report will be issued for each location, no further action is necessary.

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Dublin, [illegible]

[illegible]

Wholesale Parts Incentive Claims

Claims Submitted On The Two Separate Each Of Parts Operations From October 1, 1969 The Close Of The Previous Audit Period, To August 31, 1970, Were Tested And Found To Be Generally Accurate. Sales Of Service Parts To Wholesale Customers Were Properly Reported And Claims Were Submitted In Accordance With The Provisions Of The Wholesale Parts Incentive Program.

Business Relationship

There Appears To Be No Corporate Connections, Management Control Or Interlocking Financial Interest In The Various Operations Of The Bronson Dodge Parts. The Lonnie Gleason Is Doing Business As Flm Division Parts Inc. With A Separate Parts Code Number Assigned In The Name Of Clinch Lincoln-Mercury Corp. This Is To Indicate The Division Parts Inc, Has Purchased Parts And Accessories Totaling $ For The Four Month Period Ending Compared With The Eight Month Audit Period Of Total, $3 To Well Single-Source Cross Parts Purchased For Re-Sale To Body Shop Customers, The Majority Of Which Are Located In Westchester County.

Flm Division Parts Inc Must Submit Invoices Pertinent To Dealership Wholesale Parts For The Supporting Data Must Be Filed Under Copies Of Purchase Orders This Procedure Is Done Upon The Value Of Parts Shipments As Reflected On The Invoices. Parts Shipments Issued By The Middle Two Parts Divisions, Which Are Not Eligible For Claims Are Issued Invoices To Each Dealership To Cover Shipment Of The Shipments To The Division Parts Inc.

The 3% Allie To The Value Of Park S. parcel Proponents What Appear To Be A Reasonable Charge For The Use Of The Parks Code As Is Discussed Part Two. An Appraisal Should Be Obtained To Central Lincoln-Wagner Corp. Is The Substantial Park Dedication Credit Resulting From Purchase By FLM Which Is Used Jointly By The Two Operations For Park Purposes.

The Conclusion Reached Upon Completion Of This Examination Is That FLM Collection Park Inc. Is A Customer Of Central Lincoln-Wagner Corp. Proposed Park For Re-Sale To Boot Shop. There Conditions The Assessment Of A Separate Park Code Was Improper And Not In Accord With Established Company Policy.

Recommendation

It Is Recommended That Park Code 13460 Be Revised And Consolidated Parcels Involved Should Be Noted That Only Park Code 12263 Will Be Used With Appropriate Value In Each Case.

H.S. Tope Manager
Supplies And Dental Appraisal

- FLH ... 13-430 ... November 21, 1990 ... 76% ... single source ... periods.
- Little, Adams, ... FLH ... plaintiffs ... Lincoln ... FLH ... 3% ... Lincoln-Nemaha ... 11-283 ...
- ... FLH ... 13-430 ... 11-283 ...

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PX 38 Memorandum by Rose (undated)

Autolite 22e **FIELD CONTACT REPORT**

| NAME OF FIRM | CITY AND STATE | |
|---|---|---|
| Atlas L-M | Brooklyn, N. Y. | |
| ASSIGNED TO | ZONE 01 | CODE NO. |
| REASON FOR CALL | | |
| INDIVIDUAL CONTACTED - NAME AND TITLE | | |
| Mr. David Pollack, Principal | | |

| ROUTING | ACT. | INFO. | INITIAL |
|---|---|---|---|
| DISTRICT MGR. | ☐ | ☐ | JRR |
| ASST. DIST. MGR. | ☐ | ☐ | |
| FIELD SALES MGR. | ☐ | ☐ | |
| NAGS MGR. | ☐ | ☐ | |
| DAM SPEC. | ☐ | ☐ | |
| SERVICE MGR. | ☐ | ☐ | |
| PROD. MDSG. MGR. | ☐ | ☐ | |
| MDSG. & ADMIN. MGR. | ☐ | ☐ | |
| ADMIN. MGR. | ☐ | ☐ | |
| | ☐ | ☐ | |
| | ☐ | ☐ | |

DETAIL (1) ITEMS DISCUSSED (2) RECOMMENDATIONS (3) ACTIONS TAKEN OR REQUIRED (4) TIMETABLE

On November 21st, I discussed the matter of Atlas L-M and FLM Collision Parts Inc. with Mr. M. J. Rowlands by phone.

On November 22nd, I was advised by Mr. Rowlands that the claims would be approved but that the dealer should be advised that no future claims would be accepted and the dealer should be instructed on the proper policies covering wholesale incentives.

I spoke to Mr. Pollack by phone at which time he thanked us for our consideration and assured us he understood the policies and that there would be no future claims.

I subsequently wrote to Mr. F. Sanchez, Zone Manager involved, and instructed him to personally review the policies with Mr. Pollack on his next visit. Copy of my letter attached.

ATTACH SUPPLEMENTAL SHEET(S) IF NECESSARY

SIGNATURE OF CONTACTING INDIVIDUAL

J. R. Rose, District Sales Manager

PX 39 Memorandum from Rose to F. Sanchez, December 6, 1972

PX 54

Ford Marketing Corporation
Inter Office Communication

Ford Parts Division
New York District Sales Office

December 6th, 1972

Mr. F. Sanchez
Zone Manager

cc: Mr. A. W. Ayers
New York District Sales Manager

Mr. F. D'Angelo
Asst. Newark District Sales Manager

Mr. J. P. McGowan
Asst. New York District Sales Manager

SUBJECT: ATLAS L-M

Subject dealer has been in business for approximately five months and a problem developed recently with regard to wholesale incentive claims. The problem has been resolved and not the subject of this memo. However, it is extremely important that you contact Mr. Pollack, sit down with him and review the wholesale incentive policies and procedures, with particular regard to the qualifications for wholesale accounts "persons engaged in automotive service and repair, etc.".

After you have reviewed these policies and procedures with Mr. Pollack, please submit a report that this assignment has been carried out as indicated.

J. R. Rose
Newark District
Sales Manager

JRR/lvf

PX 43 Letter from D. Pollack of Atlas to Rose, November 6, 1972

24e

(E) → PX 43

# Atlas Lincoln-Mercury Inc.

COMET - LINCOLN - MERCURY - CAPRI

919 QUENTIN ROAD
BROOKLYN, N. Y. 11223
TEL.: 339-5500

November 6, 1972

Mr. Jim Rose
Auto-Lite Division
Ford Marketing Corp.
U.S. Highway 46
Teterboro, N. J. 07608

Dear Jim:

I am enclosing a copy of a letter received from F.L.M. Collision Parts, Inc., sent to me evidently to show their intentions of payment.

I have confidence in your sound judgment as to how this matter will be resolved to our mutual satisfaction.

Very truly yours,

ATLAS LINCOLN-MERCURY INC.

David Pollack

David Pollack

DP:ir
enc.

25e

# F. L. M. COLLISION PARTS Inc.

416 Saw Mill River Road
YONKERS, NEW YORK

October 31, 1972

Mr. David Pollack
Atlas Lincoln Mercury
919 Quentin Road
Brooklyn, N.Y. 11223

Dear Mr. Pollack:

Your incentive credit statement of $24,000.- for August, September and October, 1972 is overdue, your obsolescence returns credit statement of $8,451.14 is overdue and your credit statement for claims and shortages for $4,000.- is overdue.

Please be advised that we shall deduct these amounts from the payments due to you which are on the next statement received from you.

Very truly yours,

Stephen Mckee

Stephen Mckee, Secretary,
FLM COLLISION PARTS, INC.

F:L

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PX 103 Form 340, Customer Request for Credit or Return, February 19, 1973

Customer Request for Credit or Return – 26e Parts and Accessories (PX103) Ford Marketing Corporation

FD3102 Ford Marketing Corporation –

SHIP TO:

| Part Number | Quantity Ordered | Quantity Shipped | Parts Distribution Center Check | Warehouse Location | Error Code |
|---|---|---|---|---|---|
| E0TZ-16838- | 2 | 2 | | | |

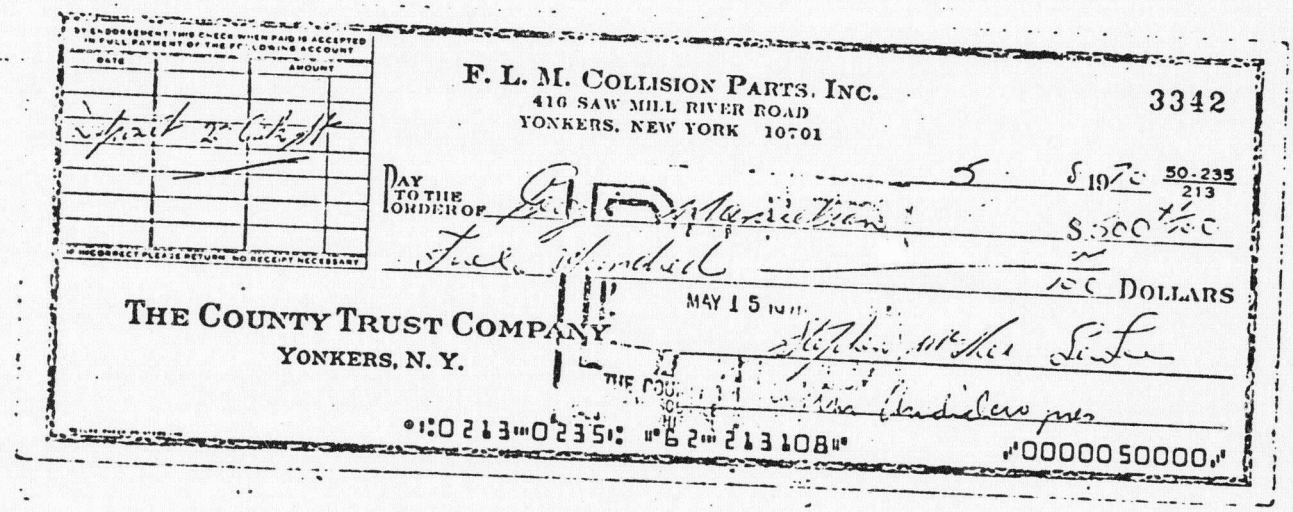
Customer's Retail Application

Not Installed At Dlr. P.D.

PX 104 Check from FLM in the amount of $500, May 8, 1970

P-104

27e



BY ENDORSEMENT THIS CHECK WHEN PAID IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT

| DATE | AMOUNT |
|---|---|
| Retainer Check | |

IF INCORRECT PLEASE RETURN. NO RECEIPT NECESSARY

F. L. M. COLLISION PARTS, INC.
416 SAW MILL RIVER ROAD
YONKERS, NEW YORK 10701

3342

5 19 7c 50-235 / 213

PAY TO THE ORDER OF Jack Mandel $500 00/100 DOLLARS

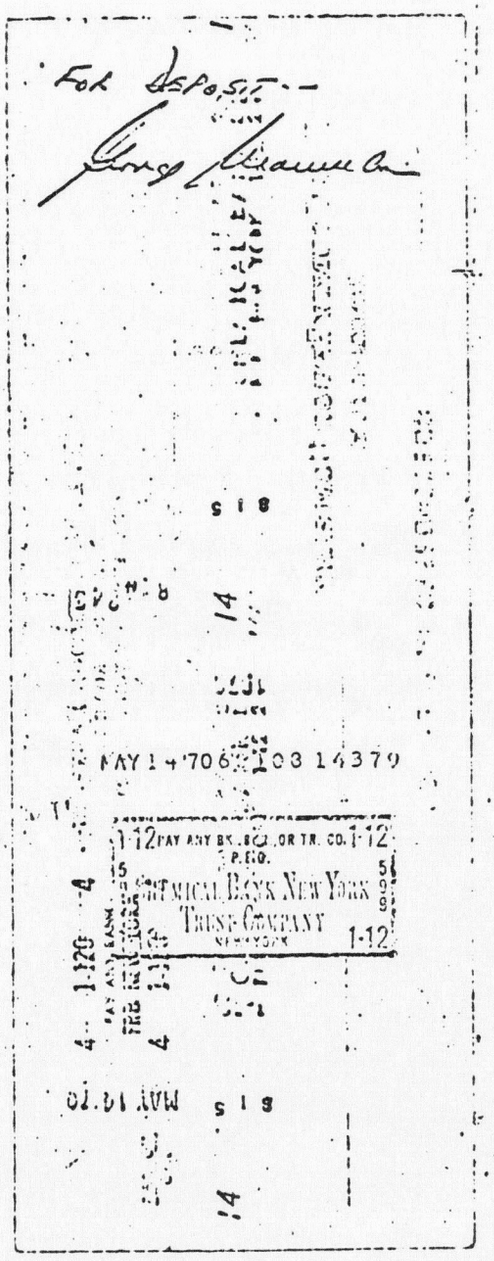
Jack Mandel

THE COUNTY TRUST COMPANY
YONKERS, N. Y.

MAY 15

THE COUNTY TRUST CO. YONKERS, N.Y.

⑆0213⑈0235⑆ ⑈62⑈213108⑈ ⑈00000 50000⑈


For Deposit
MAY 14 '70 6 108 14379
1-12 PAY ANY BK., BKR. OR TR. CO. 1-12
CHEMICAL BANK NEW YORK
TRUST COMPANY
1-12

PX 105 Letter from A. N. Borelli of Pleasantville to Teterboro, July 19, 1973

PA 105

FORD | PLEASANTVILLE FORD INC

Telephone (914) 769-1800 34 Pleasantville Rd
PLEASANTVILLE, N Y 10570

July 19, 1973

Ford Marketing Corporation
Parts Depot
State Highway 46
Teterboro, New Jersey

Attention: Mr. Arthur Termott
Security Supervisor

Dear Mr. Termott:

We respectfully request that a parts pick-up authorization be issued to FLM Collision Parts to pick-up parts in the name of Pleasantville Ford Inc.

Such authorization is to remain in effect until cancelled, or otherwise terminated, in writing by Pleasantville Ford Inc.

Very truly yours,

PLEASANTVILLE FORD INC.

Anthony N. Borelli
President

ANB:hwt

cc: FLM Collision Parts

File

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**PX 109 Rowlands Deposition (portion), September 6, 1974**

MORRIS J. ROWLANDS, having been duly sworn by Henry Jacobs, a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. SCHLESINGER:

Q What is your full name?

A. Morris J. Rowlands.

Q Where do you reside, sir?

A. 432 Arlington, Birmingham, Michigan.

Q Mr. Rowlands, since 1968 you have been general sales manager of Ford Parts division of Ford Marketing Corporation; is that true?

A. Yes, sir.

Q Can you briefly tell us what your duties and obligations and responsibilities are in that position?

A. I am responsible for the sale of Ford parts to Ford and Lincoln Mercury dealers, to Motorcraft distributors and glass distributors and to Ford authorized remanufacturers.

Q In your position as general sales manager from time to time do you have an opportunity to institute policy in reference to sales of parts?

A. Then they are incorporated in certain binders and manuals for ease of reference.

Q. What type of manuals would be maintained in reference to sale of parts?

A. Right here -- the district policy and procedure manual is our manual.

Q. At any time since 1968 did you become familiar with FLM Collision Parts, Inc.?

A. By "familiar," I knew of them.

Q. When did you first become aware of them?

A. That would have been in the fall of 1969.

Q. What reference did you become aware of them --

A. Through an audit.

Q. Audit done by whom?

A. By the Ford Parts division.

Q. Of FLM?

A. I am not -- no. We audit -- we audited Central Lincoln Mercury.

Q. In 1969?

A. Correct.

Q. Who directed that the audit take place?

A. I don't know the specific individual.

Q. Are these audits routine audits?

the audit statements?

A As I indicated before, all of the audit summaries go over my desk.

Q When did you receive this audit statement?

A Within some time in the fall of '69.

Q After reviewing it did you have any discussions with anyone with reference to FLM?

A I am trying to recall any specific discussions, other than would be, you know, a --

Q Did you discuss the audit with anyone?

A I am sure I probably discussed it with someone, but to identify whom I might have discussed it with I can't.

Q Did you make any notes of this discussion or any notes of your review of the audit?

A Not to my recollection at this time.

Q Did you dictate any memorandum or any letters in reference to your review of the audit?

A No, I recall dictating nothing on that.

Q What in the audit brought your attention to FLM?

A The fact that -- the fact that the auditor went to the location and looked through their records came to my attention.

Q Went to what location?

A Went to the location of FLM.

Q Was that FLM's location different from that of Central Lincoln?

A Yes.

Q What else came to your attention?

A You mean specifically like what? You know, an audit report, there are all kinds of numbers --

Q What specifically in reference to FLM came to your attention when you reviewed the audit?

A That it was a very clean audit, as I recall -- there was either no charge back or a minimal one. That everything was found basically to be in order.

Q The fact that FLM, the audit was done at FLM's location, did that have any significance to you?

A Yes.

Q What was that?

A The significance was that they were selling to FLM and FLM was not a retail outlet.

Q That who was selling to FLM?

A Central Lincoln Mercury, the dealership we were ~~ordering.~~ auditing.

Q In what category did FLM fall if not retail, as a retail outlet?

A. Well, it, in terms of the function they performed, they were selling to retailers, and by definition that would make them a wholesaler.

Q. Therefore, Central Lincoln on this review of the audit to you was selling to a wholesaler who in turn was selling to a retailer?

A. That is correct.

Q. Was there any significance to you in that?

A. Yes, there was.

Q. What was that?

A. The intent of our wholesale incentive is to pay our direct customer, the dealer, a wholesale incentive when he performs the function of a wholesaler.

This caught my attention because he had not performed the function of a wholesaler. He had not moved the goods down one step in distribution to a retailer.

Q. Your policy of incentive, is this a written policy that you had at that time?

A. Yes, it is.

Q. Did you participate in formulating this policy?

A. Not the particular policy. It was on the books at that time.

Q Did you participate in the, in servicing this policy or making sure that this policy was carried out? Was that one of your functions?

A. I would have a partial responsibility.

Q In the policy in effect in 1969 -- that was the date that you said you saw the audit?

A. The fall of '69.

Q Was there a definition of wholesaler and retailer within the formal policy in reference to wholesalers, wholesale incentives?

A. The policy at that time referred to an eligible customer as one who resold, which is normally retailer resales.

In other words, the intent of our policy was always --

Q I am not asking for intent now. I am asking you specifically in the policy, in the formal policy.

That policy is printed somewhere?

A. That is correct.

Q It is printed in the district policy and procedure manual?

A. Yes, it would be located in that.

Q Would it be located anywhere else?

A. There is a general information section in our price books that we put out.

Q. Those price books are sent to all of your dealers?

A. Yes.

Q. In that price book it would set out what would be an eligible and ineligible customer?

A. That is correct.

Q. Would it also set out who was eligible and who was ineligible under the wholesale incentive program?

A. Yes, the wholesale incentive policy would identify that.

Q. When did the wholesale incentive policy come into existence?

A. I don't know the exact date. It goes back a number of years prior to 1968.

Q. Approximately?

A. I couldn't even give you a wild guess.

Q. More than five?

A. Pardon?

Q. More than five years prior to 1969?

A. I would say that that would be a safe estimate.

Q. Between 1968 and '69 did you ever have an

plan between January, '68 and December, '69?

A We started -- we started at 20 percent, and then it was increased subsequent to that to 23 percent.

Q This would be the discount allowed to the franchise dealer?

A That is correct.

Q Was there any change made in eligibility for the discount in that period of time?

A I don't recall a change being made during that period.

Q As of January, 1968 who was eligible for the wholesale incentive discount?

A An eligible customer during that period was identified as one who purchased the parts for resale.

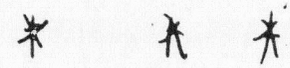
Q Would that be the only definition set forth in your manual and the price book?

A I would have to get it out.

(Discussion off the record.)

Q The eligibility for the wholesale incentive would be set forth in this document for '68, '69 and '70, and so forth, and this document, the price book --

A Our price book typically goes out every two months. We update the general information section of





who was buying it for resale.

Q Did it define the term resale?

A No, it did not, to the best of my recollection.

Q Was there any definition of the word wholesale?

MR. MAC CRATE: Has the witness said that the word "wholesale" was used?

Q Do you know whether there was any definition of the word "wholesale" in that section?

A I don't know.

When you say "definition of the word," -- I don't know what you are looking for here.

Q In that section dealing with wholesale incentives, did it define the word "wholesale" as used in the phrase "wholesale incentives"?

A I don't recall a definition being on the page.

Q Was there a working definition that you used in analyzing a wholesale incentive?

A I can give you what wholesale is.

Wholesale by definition is when you move, when you move goods down from the wholesaler level to the retailer level, you have performed the wholesale function.

That is the accepted definition of wholesale in

the after market.

Q In the after market as used in wholesale incentive, is that the definition of wholesale as applied in wholesale incentive?

A Now you have used the word after market, and I can't respond to your question when you put it that way.

Q You used it.

MR. SCHLESINGER: Read back his answer, please.

(The reporter read the answer.)

A That should be the accepted definition in the dealer channel.

Q Is that the definition used in referring to the word wholesale in wholesale incentive plan that Ford had in 1968?

A Yes.

Q But that definition was not written in any of the policy documents at that time?

A Not to my knowledge. Not to my recollection.

Q At that time, in 1968, did it have any listing of ineligible wholesale sales?

THE WITNESS: Let me have that, this document here. It follows the same format.

A Yes, the format also had ineligible sales as one

* * *



Q After reviewing the audit statement of FLM --

A That was the audit statement --

Q That made reference to FLM --

A Right.

Q -- did you discuss that with anyone in reference to the wholesale incentives received by Central?

A As I indicated before, there was probably discussion. I cannot remember any specific individual or group of individuals that I discussed it with.

Q What were the discussions and when?

A The discussions, I am sure, would have had to do with what we indicated was a situation where the wholesale function had not been performed, yet in terms of the language of our policy, the sales did qualify for incentive payment.

Q The language you are referring to is what?

A The language I am referring to is that term of sale to a concern for resale.

Q The concern being the dealer, or the concern being the person that the dealer sold to?

A The concern that the dealer sold to.

If he bought it for resale, that particular

* * *



Q Prior to then were crash parts eligible?

A Prior to November, 1968? No, they were not.

Q What is the definition of crash parts?

A It is generally thought of as a peripheral sheet metal and some of the bracketry directly attached to the sheet metal and some of your moldings and exterior trim parts. The common acceptance of the term --

Q So as of November of 1968, crash parts as well as other parts were within the category of wholesale --

A That is correct.

The crash parts are just added to an already established wholesale incentive program.

Q The adding of the crash parts was the result of conference with the F.T.C.?

A That is my understanding.

Q As a result of the conference with the F.T.C., were there any other changes made that you know of in this particular policy of wholesale incentives?

A Can you be more specific on that. That is an awfully broad --

Q I am limiting it to the wholesale

to other companies like FLM between 1969 and 1972 --

MR. MAC CRATE: I would have to object to the form of the question.

You are using the expression "other companies like" --

MR. SCHLESINGER: All right, I got it.

Q Were the discussions in reference to companies who were purchasing from franchise dealers and selling to customers other than the ultimate consumer of the product, other than the ultimate purchaser of the product?

MR. MAC CRATE: Would you read that question, please?

Q Do you follow the question?

A No, I am having trouble.

Q You discussed before that you in your definition of wholesaler and retailer, wholesaler is one who sells to a retailer?

A Correct.

Q The retailer is one who sells to whom?

A The consumer.

Q When you analyzed that audit of Central and you saw FLM mentioned, FLM to you was a wholesaler or a retailer in your understanding of the audit?

A Wholesaler.

Q That was because they sold to retailers?

A Correct.

Q Were there other companies that were discussed between 1968 or 1969 and 1972 who were selling, purchasing from franchise dealers and selling to retailers, not ultimate consumers?

A To my knowledge, there was no other company of that nature.

Q After reviewing your audit, you told us that you had some discussions.

Do you remember when those discussions took place in reference to FLM's position?

A As close as I would be able to identify that, it would be in the last quarter of '69.

Q In your definition of wholesaler being one who sells to retailer, is there any particular categories of retailers that this falls into or any retailer?

A Any retailer that is performing the function, just down to a retailer.

It could be a gas station or independent garage, body shop.

Q The retailer is the one who sells to the

consumer?

A. To the consumer.

Q. Can you tell us what your discussions were in reference to FLM and Central after you reviewed that audit?

A. My discussions centered on the language of our policy.

Q. When you say "policy," you are talking about the wholesale incentive policy?

A. The language of the wholesale --

Q. Can you tell us what the discussion was?

A. Yes.

A concern that the language made it possible to pay an incentive to one of our dealers when he did not in fact perform the function we were paying him for.

That concerned me.

Q. Again just for the record, the function --

A. He did not --

Q. -- as a wholesaler?

A. He did not move it down one step in distribution to the retail level.

The dealer was supposedly functioning as a wholesaler claiming a wholesale incentive to move it down in distribution to the retail level. He did not

do this, and yet the language of our policy still made the sale eligible for the wholesale incentive.

The second thing I was concerned about was that this kind, this kind of an operation would make it possible for a company such as FLM to in turn, say, sell to Ford dealers.

In other words, you could go from a Ford dealer to company "XYZ" to another Ford dealer, and we would wind up paying wholesale incentives in effect to move the goods from one Ford dealer to another Ford dealer, which is contrary to our policy.

We will not pay, only under some very specific circumstances, a wholesale incentive on the sale of Ford dealer to Ford dealer.

So we saw a potential problem where if someone desired they could use this kind of a setup to circumvent our policy and the intent of our policy.

Q Was it you who expressed this concern in the discussions or were there others who expressed this concern?

A I was probably the most concerned because it directly affected a responsibility I have in the administering of the policy in the field.

Q At the time of reviewing the audit statement,

was there any indication of who the customers of FLM were?

A That was definitely spelled out.

Q Were any of the customers of FLM at that time other Ford dealers?

A As I indicated, it was a very clean audit.

Q I don't understand --

A A clean audit means that FLM's sales on which Central Lincoln Mercury claimed wholesale incentives were to body shops and retailers other than Ford and Lincoln Mercury dealers.

Q So the second part of the concern was not directly related to FLM at that time?

A That is correct.

Q But you envisioned this as a possiblity that it could go that course of dealer to middle to dealer?

A I saw our language as not preventing that kind of a setup.

Q Was there more than one discussion in reference to this after reviewing that audit?

A It actually -- it actually led to a very prolonged and deep study of the entire wholesale incentive system, claiming system, language and everything

(Discussion off the record.)

A "Sales except Car Lite Glass"-- Car Lite Glass is in parentheses -- "to any independent garage, service station, repair shop or other make non-company dealer actually engaged in automotive service or repair work."

Q That is a new item in your policy, wholesale incentive plan?

A That is new language.

Q New language?

A Yes.

Q For what reason was that language inserted?

A That language was inserted so that we would only be obliged to pay wholesale incentive to a Ford Lincoln Mercury dealer when they in fact performed the wholesaling function and did move it down to a retailer.

Q In reference to time, do you know if this is one of the first changes or decisions made in reference to the policy of the wholesale incentive plan?

A No.

I know it was one of the significant ones, and that is why it sticks in my mind.

Q In your discussions in the study, were there also discussions and studies and concern about the

* * *



claiming system.

Q Would you explain that to us, please?

A That is a big, big subject.

Q Claiming is a way of defining --

A When our wholesale incentive sale is made, a dealer to get his money submits a claim.

Q Prior to the change -- when was that change, by the way, that resulted from the study?

A That was actually implemented in January of '72.

Q Prior to January of '72 how would a wholesaler put his claim in for the incentive?

A Well, I can give it to you in general. I can't give you the document numbers, etc.

Q This policy is reflected in documents?

A Yes.

These would all be standard forms that the dealer would fill in.

Q Would you tell us generally how it was done?

A Generally the way it worked was that a dealer would list the document number, which would be a prepare order or a counter sales slip on which he made this wholesale sale.

I think it would show the document number, the

A We were unable to find a way to put that into our system. That was the one element that had to be left to audit.

Q Prior to the change in the claiming system in '72 to which you could collect on parts and amount would have to be left to audit?

A Yes.

In the old system the audit tracks, of course, were apparent -- the audit tracks were the dealer's repair ~~or~~ order number, counter slip number, date of sale. So that the auditor had tracks from that system.

Q From that audit prior to January, '72 we would be able to tell if it was truly a part that was an incentive part?

A Yes.

Q Whether the discount claim was truly the proper discount?

A Right.

Q And who the customer was that received it?

A That is correct.

Q If prior to January of '72 as a result of an audit it was learned that one of the parts that a discount was claimed on was not truly eligible for the

* * *



we performed the wholesale sale function where you sell to a retailer.

Our prices are based on the function performed. So when we sell a Motorcraft part to a warehouse distributor, his acquisition cost is lower than when we sell that identifical part to a Ford dealer.

Q This is by design? The price --

A By law.

Q By law?

A Yes.

Q What law is that?

THE WITNESS: Which law is that?

MR. MAC CRATE: Are you asking the witness for --

MR. SCHLESINGER: Why not?

A I don't know.

MR. SCHLESINGER: He deals in the business. He is there every day.

MR. MAC CRATE: I think we better leave the law in the case to the lawyers.

Q This distinction was subject to some law?

A Our pricing is based upon functional discounts.

Q Okay.

A Our concern was that we recognize a dealer as

only specific times that I would be able to -- to say I am quite certain I had discussions would be the dates of the other audits.

Q Were subsequent audits after '69?

A Yes, there were.

Q When were they?

A October, 1970 and late in '72, the fourth quarter of '72.

Q Between '69 and October of '70, between the audit in '69 and the audit October of '70, were there any restrictions on FLM or the dealer from whom FLM purchased in receiving the wholesale incentive?

A The 1969 audit, the 1969 audit was a clean audit, and my recollection is that the business continued on as it was being done.

Q Between --

A Up until, you said through 1970, was it?

Q The audit of 1970.

A You said the audit of 1969.

Q From the audit of 1969 --

A That audit provoked the change in the method that that business was being done.

Q From October of 1969 to your audit of 1970, did you have any discussions with Mr. Rose or

* * *



Q There weren't any formal minutes kept of the meetings?

A No.

Q Did you order the audit of 1970 of FLM?

MR. MAC CRATE: Would you read that question?

Q Did you order, did you personally order the audit of FLM in 1970?

A That is not in my -- that is not my bailiwick.

Q Were you aware that there was going to be an audit of FLM in 1970?

A I think I indicated earlier that there is a routine piece of paper that goes on my desk that somebody --

Q Did you have any conversations with someone prior to the audit in reference to the audit?

A Not to my recollection.

Q When did you see a copy of that audit?

A Sometime in the fall of '69.

You are talking --

Q I am talking about '70.

A Now you are on '70?

Q Yes.

A Let us go back over the question. I thought you

* * *



were talking about '69.

Q Did you personally order the audit of 1970?

A. The audit of 1970, that particular audit I believe I did ask for.

Q Was this as a result of conversations or discussions that you had with anyone?

A. Yes. I believe that was -- I think that was wanting to get a clarification of the exact relationship between Central Lincoln Mercury and FLM, and that was one of the things that I wanted the auditor to clarify for me.

Q Prior to ordering this audit, you had the previous audit which laid out the relationship of FLM to the Central Lincoln?

True?

A. The audit of 1969 had reference to the relationship.

Q When did you order the audit of 1970?

A. I don't recall.

Q Was this by written document?

A. I don't recall that.

Q To whom did you send this order or directive?

A. I don't recall that.

I know that Hal Soper was the one who performed it, but whether I had gone directly to Hal --

Q. Could you spell it for us?

A. S-o-p-e-r.

Q. Is he still with your organization?

A. He is still with the Ford Motor Company.

Q. Did you receive a copy of the audit?

A. I get a copy. The summary.

Q. The summary?

A. The summary report.

Q. Did you review it?

A. I read the summary report.

Q. Did it clarify to you the position that you were looking for in reference to FLM's status?

A. Yes. It led to -- it led to a decision to discontinue the second code number.

Q. The --

A. The second code number that Central Lincoln --

Q. Prior to that there was no decision with reference to the --

A. The code number thing was also under study during 1970.

Q. You are talking about the code number of

Lincoln Mercury or Central Lincoln or generally the code numbers?

A No, the audit was specific. It talked about the second code number Central Lincoln Mercury had for sale of parts to FLM.

Q Who made the decision to eliminate the code?

A The audit report recommended that we do it and I acted on it.

Q What was the recommendation of the audit report?

A That the code number, the second code number was not consistent with our policy.

Q In what respects?

A The second code numbers are for a Ford or Lincoln Mercury dealer who does, say, quite a bit of work with government, where he wants to segregate that business from his regular dealership business, some very, very large fleet that might have a volume of business where that would be separated -- we have Ford dealers, who we have both the passenger car franchise and the heavy-duty truck franchise, and many of them will have a separate physical location for the heavy truck. That helps them to segregate by code.

Those are the types. There might be another category, too, but that -- it is for a Ford dealer where he has his physical investment split to where it is helpful to him, where we can have --

Q So it is based on the investment of the Ford dealer himself?

A That is correct.

Q Was this policy formalized in any writing about code numbers or second code numbers?

A Yes. It is -- we have policies on it.

Q Was this policy, this formal policy in effect in 1968, '69 and '70?

THE WITNESS: Do we have a copy of it.

I don't know what the --

Q While they search for it, I will ask you another question.

Back in 1969 when you saw the audit of FLM, it was clear that FLM was not in any one of these categories?

True?

A That is right.

Q Based on the report of the audit in 1970, did you personally make the decision to eliminate the code number?

Q To '71.

A It is my understanding that they did receive wholesale incentive.

Q Did the audit of 1970 as you stated, was that a clean audit?

A Yes.

Q What was the next audit performed?

A The next audit was in the fall of --

MR. MAC CRATE: Excuse me. The next audit of whom?

MR. SCHLESINGER: FLM.

A The next audit of FLM was in the fourth, somewhere in the fourth quarter of '72.

Q Was this at your direction?

A No.

Q Who directed this audit?

A This was out of the controller's office that has the audit responsibility.

Q Were you aware prior to the audit taking place that there was going to be an audit?

A There would have been a routine advice of the audit that would come over my desk.

Q Did you have any discussions with anyone in reference to this audit prior to it taking place?

A No.

Q Again you saw a copy of the audit statement?

A On that particular -- I don't believe I did. Somehow that -- I don't recall seeing any -- I don't recall seeing any audit findings on that late '72 audit.

Q Did you have any discussions with anyone in reference to that late '72 audit?

A Yes.

Q With whom?

A I got a telephone call from Lamar Hughes, the regional manager.

Q Tell us about that discussion, please.

A He called to advise that there was a problem in that it had just come to their attention that wholesale incentive had been claimed on sales made to FLM after the policy change --

Q That being July --

A July of '71.

And would involve a charge back on these ineligible claims, and that it created a serious problem because a replacement dealer had come in place of Central Lincoln.

Central Lincoln Mercury had been replaced by

another dealer. So we had a new dealer who was involved in this entire charge back situation.

Q Did you advise him on this, or was a decision made?

A At the time of the telephone conversation, I said send me a memo on everything that you are telling me.

Q Did you receive a memo?

A I received the memo.

Q Did you act on the memo?

A My action was to get with legal counsel.

Q Did you meet with legal counsel?

A I talked with legal counsel.

Q Was this of the General Counsel's office of Ford?

A Yes.

Q As a result of your conversations were there certain actions taken?

A A decision was made.

Q What was that decision?

A The decision was made to not endorse the charge back but make sure that the dealer understood that that was the end of it.

Q Whose responsibility was it to inform the dealer that that was the end of it?

by a given franchise dealer would be passed upon by whom?

I am talking now prior to 1970.

A That would be in our market representation department.

Q Would that be regionally?

A No, that would be Central. That would be the market representation department reporting under my jurisdiction.

Q Were you aware of Central Lincoln's having two or more than one code number prior to 1970 other than through the audit of FLM?

A I was aware of it on that '69 audit. That is when I became aware of it.

Q As of the '69 audit you didn't take any action?

A That is correct.

MR. SCHLESINGER: Again I am going to conclude at this time subject to an application to His Honor for relief to have an opportunity to continue the deposition of Mr. Rowlands at another time.

MR. MAC CRATE: We are prepared to stay here right now.

MR. SCHLESINGER: I know you are, but I

PX 110 Rose Deposition (portion), September 6, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

FILM COLLISION PARTS, INC.,

Plaintiff,

-against-

73 Civ. 713 (TPG)

FORD MOTOR COMPANY and
FORD MARKETING CORPORATION,

Defendants.

----------x

September 6, 1974
10:15 o'clock a.m.

DEPOSITION of the Defendant, FORD MARKETING CORPORATION, by JAMES R. ROSE, taken by the Plaintiff, pursuant to Notice and Court Order of Judge Thomas P. Griesa, dated July 23, 1974, held at the offices of Sullivan & Cromwell, Esqs., 48 Wall Street, New York, New York, on September 6, 1974, at 10:15 o'clock a.m. before Henry Jacobs, a Notary Public of the State of New York.

ADLER REPORTING SERVICE
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1

2 J A M E S R. R O S E, having been duly
3 sworn by Henry Jacobs, a Notary Public of
4 the State of New York, was examined and
5 testified as follows:
6 EXAMINATION BY
7 MR. SCHLESINGER:
8 Q. What is your full name?
9 A. James R. Rose.
10 Q. Where do you reside, sir?
11 A. 355 Lakeview Drive, Wyckoff, New Jersey.
12 Q. Mr. Rose, can you give us your formal
13 title and what company you are employed by?
14 A. District sales manager, Ford parts division,
15 Newark District, Ford Motor Company, Ford Marketing
16 Corporation.
17 Q. What is the relationship between Ford
18 Marketing Corporation and Ford Motor Company?
19 A. Ford Marketing is a subsidiary of the Ford
20 Motor Company.
21 Q. Is it wholly owned by Ford Motor Company
22 to your knowledge?
23 A. Yes, it is.
24 Q. How long have you had the position that
25 you presently hold?

* * *



your duties?

A. To supervise the sales of Ford Motor Company products in the after market through dealers and independents.

Q. That lasted up through 1970, as district manager?

A. Would you repeat the question?

Q. How long were you a district manager?

You were a district manager in various areas from time to time.

Correct?

A. Correct.

Q. When did you stop being a district manager?

A. Well, I stopped being a district manager when I was made regional manager in the Autolite division. That was September of 1964 to my recollection.

Q. But then you went back to being a district manager after that?

A. Yes, that is correct.

Q. The present position you have is not district manager?

A. Yes, it is, but this is Ford Parts division.

Q. What was the difference now between being

district manager of the Ford Parts division and district manager back in 196 --

A. The difference was the Autolite division was responsible for independent distributor sales.

Q. Could you define what you mean by independent distributor sales?

A. Warehouse distributors engaged in selling automotive parts in the after market.

Q. After market meaning that after it leaves Ford Motor Parts or Ford Motor Company?

A. As opposed to original equipment products placed on the market after the car is built in the assembly plant.

Q. What kind of marketing analysis or what kind of work did you do specifically in this capacity?

A. At what particular time?

Q. Let us deal with when you were with the Autolite division.

A. As a district manager?

Q. Right.

A. Our responsibility was to sell Autolite brand products to independent distributors and to obtain marketing penetration for Ford Motor Company products on those product lines through the independent channel.

* * *



independents as you call them and franchise dealers; true?

A. Well, the market was -- I don't know how to answer that.

MR. MAC CRATE: If you don't understand the question I think Mr. Schlesinger would be happy to rephrase it.

Q. If you don't understand it, tell me you don't understand it.

A. All right.

Q. From the point of view of selling your product, or Ford selling its product, did they distinguish between two markets, (a) the franchise dealers and (b) the independents?

A. I would have to say that is true.

Q. Did they have a separate sales department that concentrated on independents and a separate one that concentrated on the dealers?

A. That is true.

Q. This was true of their Autolite department division as well as their parts division?

True?

MR. MAC CRATE: You are speaking of about what period of time, Mr. Schlesinger?

* * *



A. On the part of the Ford Parts division, not that I am aware of.

Q. If a purchaser of parts other than one of those three categories wanted to purchase parts from the Ford Parts division, could they?

A. Other than those three categories?

Q. Correct.

A. No.

Q. Back in 1967, could an independent other than one of those -- other than a glass or a wholesaler pick up parts at the depot of the district you were involved in?

A. Yes, they could pick up parts under a certain policy.

Q. When they would pick up parts, would they receive a bill for the parts when they picked it up?

A. No.

Q. Would a dealer, a franchise dealer, be billed for those parts which would be picked up by the independent?

A. Yes.

Q. Would the franchise dealer pay that bill for the parts picked up by this independent?

A. Yes.

* * *



service.

Q. I am not getting it.

A. People who drove their cars into the dealership for service.

Q. In other words, I as a Ford owner, owner of a Ford car, drove my car into a Ford franchise dealer, I would be a service customer?

A. Correct.

Q. Give us the working distinction of a wholesale customer.

A. A wholesale customer would be independents who handle service work on vehicles who purchase parts from franchise dealers acting as wholesalers in that capacity.

Q. The working distinction of these two categories that you just gave us is that the same day, the same distinction applies today as it applied back in '67?

A. Essentially.

Q. In reference to service customers then there wouldn't -- the service customer wouldn't be picking a part up because he is someone driving in getting his service at the dealership?

Could the wholesaler pick up at the depot,

* * *



he sold this class of account.

Q. So I as a franchise dealer selling that class of account could get an added discount or an added incentive from the Ford Parts division?

A. It was an incentive only.

Q. What is the use or definition of the word incentives in that class --

A. Wholesale parts incentive I believe is the term.

Q. What type of incentive was that?

MR. MAC CRATE: What do you mean? Could you clarify that?

MR. SCHLESINGER: Sure.

Q. It was an incentive to encourage the franchise dealer to purchase parts and to sell them to such a class of dealers, such a class of independents?

A. It was not an incentive to have the dealer purchase parts.

It was merely an incentive to make it possible for the dealer to perform the wholesale function at a profit.

Q. How would that be related into, that they would be able to get the product at a less of a price than if they weren't selling it to such an independent?

A. They would receive an incentive, which meant that

* * *



you became familiar with FLM?

A. That is correct.

Q. Had FLM been known to other people in the New York district prior to 1970?

A. I can't speak to that.

Q. Did you discuss FLM with anyone else?

A. Oh, yes.

Q. The people that you discussed it with, did they know of FLM prior to 1970?

A. Yes.

Q. Who were the people that you had discussed FLM with?

A. My assistant.

Q. Who was that?

A. Mr. Frank D'Angelo. Mr. Frank Ascione, our general field manager in New York.

I guess that is about it.

Q. When was the first time that you had the discussion with Mr. D'Angelo?

A. Sometime in 1970, as the result of a dealer inquiry.

Q. What was the inquiry and to whom was it made?

A. The inquiry, I believe, was directed to myself,

and it had to do with the establishment or request for the establishment of a separate parts code for a wholesaler, and this dealer had asked for a separate parts code, and then referred to FLM, I guess, in the conversation.

Q Is this the same request, the type of request as you referred to earlier, to get an identification number to allow people to pick up at the depot other than franchise dealers?

A. No, this request had to do with a dealer code.

Q What is a dealer code?

A. It is a parts and accessory code whereby a customer code is used to identify all accounts for billing purposes, shipments and etc.

Q This is a code that is set up by Ford Motor to identify its customers?

A. Correct.

Q What was the information or request made in reference to this code?

A. The request was that we establish a code for an account of a dealer, and the dealer alluded to the fact that FLM, I believe, had a separate parts code.

Q Who was the dealer that made this request of you?

A. I believe it was Parkview Lincoln-Mercury.

Q. Was Parkview a franchise dealer?

A. Yes, they were.

Q. Are they presently in business?

A. To the best of my knowledge.

Q. Are they still a franchise dealer?

A. To the best of my knowledge.

Q. Did Parkview have a code as a franchise dealer?

A. Correct.

Q. Who at Parkview called you?

A. Mr. Dick Vogels, the principal.

Q. He called you?

A. Yes.

Q. He said to you that he would like to have a separate dealer code set up for FLM?

A. No.

He indicated that he wanted a separate code set up for an account.

Q. For an account of his?

A. Right.

I indicated that we didn't have separate accounts, parts codes for independent type accounts.

Then Mr. Vogels, I believe, alluded to FLM.

Q In what reference did he allude to FLM?

A. The fact that FLM supposedly had a P and A code with the Ford Motor Company.

Q Did you check the records with reference to this?

A. Yes, I did.

Q What did it show?

A. The records showed that FLM was operating under a separate P and A code -- I believe it was Central Lincoln Mercury at the time, and that the company had issued the P and A code with the understanding that this was to be a separate or branch operation of Central Lincoln Mercury.

Q Was there anything in writing between Central Lincoln Mercury and Ford in reference to this code?

A. Yes, there was.

Q In what form was that writing?

A. There was a letter in the file requesting the separate parts code.

Q Was there a response to this letter?

A. There was obviously some response. What form it took, I don't know.

Q Was it in letter form?

A. I can't say for sure that there were two.

Q. One report covering both companies?

A. I can't say for sure.

Q. Up through May of 1970 did Ford ever bill FLM directly for any of its purchases?

A. Up until May of '70? Yes, I believe they did. I believe we did.

Q. Do you know when they started to bill FLM directly for its purchases?

A. No, I don't.

Q. In order to be billed separately for your purchases, would you have to have a code number?

A. Yes, you would.

Q. If you had a code number you can order and pick up in your own name; is that true, or under your own number?

A. Yes, if you have a code number assigned.

Q. The other system would be utilizing identification number where you were picking up through a franchise dealer?

A. There is no other system. There is only one system.

Q. Previously we talked about identification numbers.

A. Well, that had --

Q. Is that what you were referring to?

A. You were referring to I.D. numbers on cards.

Q. Right.

A. I wasn't sure whether they were numbered or not. But P and A code is a separate code used for billing purposes, and that is always assigned to a dealer only.

Q. FLM had such a P and A code?

A. As a branch of Central Lincoln Mercury.

Q. Whether it was a branch or not, it, the entity FLM, had a separate P and A code?

MR. MAC CRATE: I object to the form of the question.

MR. SCHLESINGER: I move to strike that part of his answer which says that it was a branch of Central Lincoln Mercury.

MR. MAC CRATE: Your motion has been noted on the record.

Q. Other than franchise dealers, did other entities receive P and A code numbers from Ford?

A. Not to my knowledge.

Q. A franchise dealer would be a dealer that sells automobiles; is that true?

A. Yes, they did.

Q. What address was it?

A. All I recall is that it was in Yonkers.

Q. Had FLM, prior to, or through May of 1970, paid for items they purchased by check or cash?

Do your records indicate that?

A. I don't believe I ever saw any record that indicated how the payment was made. I could be wrong.

Q. Previously when we discussed -- I want to clear up that point about identification numbers.

Were you making a distinction between the P and A code and the identification numbers?

A. As I said before, I am not sure whether there is any number assigned to what we will call pickup cards or I.D. cards. We will call them pickup.

The P and A code is the basic number that we give to the dealer for billing and sales reporting and so forth, incentive reports.

That is his basic customer number.

Q. If you didn't have a P and A code, could you pick up at Ford?

A. Yes, you could, under certain circumstances.

Q. Would those circumstances be this identification number?

A. Again I don't know whether there is a number assigned to the will-call pickup card. As long as you had a will-call pickup that was assigned to a dealer, you could make that arrangement.

Q. If the dealer, the franchise dealer, gave his will-call pickup card to someone else, that person could pick up at Ford?

A. Sure, because he would be responsible. The driver would have to sign out for it and so forth.

Q. In order for the franchise dealer to give his will-call pickup card to someone else, would he have to get permission from Ford?

A. No, there was no way we could control that. He would be responsible for the billing though.

Q. Under the code number --

A. Correct.

Q. -- the same thing, under the P and A code number --

A. Right.

Q. -- the person who has the code number is responsible for the billing?

A. Right.

Q. You had your discussion with Mr. D'Angelo and did you do a research of your records in reference to

organization?

A. He had an export code --

Q. I just want to restrict it to branch now. Not export -- or not Ford as against Lincoln Mercury.

A. I believe as far as branches were concerned, Central was probably the only one that had a branch code.

Q. In the records of Ford, is there anything in writing that specifies FLM, FLM's code, or the code number that FLM used as a branch code?

Did it use the word branch code as a separate marking?

A. I am not sure that it would be referred to in that manner. It would be refered to as a separate code only.

Q. Going back to your sales policy --

Was there anything in the policies or contracts that Ford had with the franchise dealers that made reference to branch codes?

A. I believe it would be referred to as a separate facility.

Q. Is that in the written contract with the franchise dealer?

A. I don't think it is spelled out.

Q. You are talking about separate facilities.

requested that he be given the benefit of a separate P and A code on what he considered to be the same basis.

As a result we decided to review all of the separate P and A codes to determine that they were in fact being used within the policy.

Q Did you take any action against the P and A code that was issued for Central Lincoln for FLM?

A. Yes.

Subsequently it was determined that this was not in fact a branch of Central Lincoln Mercury, but that it was a separate entity, and as a result we consulted with the dealer and the decision was made to cancel the code.

Q Did you cancel any other codes that you had issued after review of all of the codes in May of 1970?

A. I believe there was another, but I am not sure.

Q What is your recollection of the other?

A. I believe it was an export code for a dealer that was inactive in the business.

Q Do you remember his name?

A. No, I don't.

Q The gentleman -- Mr. O'Halloran --

A. Correct.

the question.

Q How did FLM compare to franchise dealers?

A. On what basis?

Q Dollar volume.

A. In what area?

Q In reference to parts.

A. In just the New York area or --

Q Let us deal with the New York area.

A. I would say they were a fair-sized account.

Q Were there accounts that were larger than --

A. Oh, yes, many.

Q How many accounts were larger than FLM?

A. In terms of all of the dealers in New York -- it could be a guess. I really don't know.

Q Give me a ball park figure.

MR. MAC CRATE: I will object.

A. I really don't know.

Q What is your best recollection at this time?

A. There were a great number that did -- larger volume, whatever that is. I don't know.

Q Between 1967 and 1970 the incentive, wholesale incentive that we spoke about previously was in effect; isn't that true?

Q. Would this Ford master price book be distributed to franchise dealers?

A. Yes, it would.

Q. What was the eligibility or who were the eligible customers in order that the franchise dealer receive this incentive?

A. I think -- it is too broad a question. When you say "who were the eligible customers," it didn't spell out customers.

Q. How did it --

A. It spelled out types of accounts.

Q. What types of accounts were eligible in order that the franchise dealer received the incentive?

A. Basically customers engaged in automotive service or repair work actually using the parts on the vehicle.

Q. If I was a customer of a dealer and I did not do any body repair work, would that franchise dealer between '67 and '70 receive the discount by the incentive?

MR. MAC CRATE: Would you repeat the question, please.

MR. SCHLESINGER: Sure.

Q. If I,as a customer of a franchise dealer,

Q. There was an eligibility for the discount based on brand, on type of part: true?

Certain parts were eligible and certain parts weren't?

A. Correct.

Q. Assume that he bought certain parts that were eligible, would he then be entitled to the discount?

A. I got to get back to this function.

I don't think I have got it clear in my mind what the function of this account is.

Q. The function is simple, to buy parts and sell to other people.

A. What people?

Q. Body repair shops.

A. You mean he would be selling other people engaged in the Ford and Lincoln Mercury body repair business?

Q. Ford, Lincoln Mercury body repair business.

A. Then he would be excluded.

He would be a broker, an intermediary, and that would be ineligible.

Q. Between 1967 and '70 he could not get a discount, the franchise dealer from whom he bought could not get the incentive?

A. According to the policy, people that were brokers or intermediaries engaged in sale or reselling of genuine Ford parts were not eligible customers.

Q. Say that again.

A. According to the policy as I recall it, the people engaged in selling or reselling genuine Ford parts to other Ford and Lincoln Mercury dealers were not eligible customers.

Q. So Ford Motor Company restricted or limited to whom the -- restricted or limited giving the wholesale incentive to its franchise dealers if the customer of that franchise dealer sold or resold the part to some other body repair shop?

A. It is too broad a question.

What brand of parts?

Q. Those which were entitled to the incentive.

A. But were they Autolite brand --

Q. Whatever product was entitled to the incentive.

MR. MAC CRATE: I think the witness is telling you, Mr. Schlesinger, that you can't embrace two hundred forty thousand parts --

Q. There were 240 parts eligible for the incentive?

drawn up by Ford Motor Company?

A. Yes.

Q And sent to the franchise dealer?

A. Correct.

Q If the audit after allowing the incentive, if the audit of the franchise dealer showed that some of those sales went to, as you called them, brokers or intermediaries, Ford Motor Company could disallow the incentive?

True?

A. Would you repeat that question?

Q Surely.

Under your definition of eligibility, after Ford Motor Company received the application for the incentive and then went at some time and audited that franchise dealer's books and they found that the incentive was given, was given because of a sale to some broker or intermediary, could the Ford Motor eliminate the incentive?

A. You would have to tell me what time period.

Q Between '67 and '70.

A. What time period did the sale take place before the audit?

Q Any time before.

A. The way you have put the question, the answer would have to be yes, to the best of my knowledge.

Q. Is that because on definition of eligibility a broker or intermediary was not eligible for the discount or was not eligible as a customer so that the franchise dealer could receive the incentive?

A. Is that because --

Q. The elimination or the disapproval of the incentive to the franchise dealer, the illustration that I just gave, is because the ultimate customer of the franchise dealer, the fellow who received it, the broker or intermediary, was not one of those eligible customers in the definition?

A. It could be.

Q. Between '67 and '70 a broker or intermediary, someone who just received the parts and resold them to body shops or other customers, was not an eligible customer?

True?

A. True.

Q. So between 1967 and '70, Ford Motor Company would only allow incentives to go to franchise dealers who sold to people other than brokers or intermediaries?

True?

Q. Other than those two?

A. Well, the ones that you referred to are always ineligible customers.

Q. In May of 1970 and subsequent to that, you became familiar with FLM?

True?

A. Yes.

Q. You saw the financial reports or the reports of the audits of FLM?

A. I believe I saw one.

Q. And you discussed FLM with Mr. D'Angelo?

A. Yes.

Q. Was FLM at that time a broker or intermediary?

A. No, as I indicated before, they were a separate facility or a branch of Central Lincoln Mercury.

Q. After 1970, and after you submitted your letter to them in reference to eliminating their own code number, would they fall into the category of broker or intermediary?

MR. MAC CRATE: I object to the form of the question.

Q. After you submitted your letter or the letter was sent out which eliminated the code number

A. That would be determined by someone else.

Q. Who?

A. That would be determined, I guess, at the time of an audit.

Q. The decision after the audit or the question of --

Were you made aware as district manager back in '70 to '72 of what the policy was of the Ford Motor Company with reference to ineligible wholesale sales?

A. Yes.

Q. Ford Motor Company relied -- you were with the man in charge of the district at that time, were you not?

A. Yes.

Q. And above you at the district level, was there anyone above you at the district level?

A. No.

Q. You were the boss of the district level; true?

A. Right.

Q. And you tell us now that you don't remember what the policy was back in 1970, '72, when you were boss of that district?

Q Did you ever hear of a gentleman by the name of Pollack?

A. Yes.

Q Who is he?

A. He was the dealer at Atlas Lincoln Mercury to the best of my knowledge.

Q The principal?

A. Yes.

Q Did you ever have any dealings with him from time to time?

A. Yes, I did.

Q When was that?

A. I believe that was in the fall of '72.

Q Do you still deal with him?

A. No, I don't.

Q When did that cease?

A. When the district was split. That was December, '72.

Q Is that company now out of business or is it still in business?

A. I have no knowledge of that.

Q Did you ever have an occasion to discuss FLM Collision Parts with Mr. Pollack?

A. Yes, we did.

Q When and under what circumstances?

A. It came to my knowledge through happenstance, I believe, that a new dealer, Atlas Lincoln Mercury, had replaced Central.

A question was asked regarding wholesale incentive by someone, and I asked why the question was being raised.

At that point I believe I was given the knowledge that FLM was going -- was being sold or had been sold or was going to be a wholesale customer of Atlas Lincoln Mercury.

Q When was that?

A. In the fall of '72, I guess.

Q Did you have any discussions with Mr. Pollack in reference to FLM becoming a wholesale customer of Atlas?

A. Yes, I did.

Q What was the conversation?

A. The conversation had to do with Mr. Pollack being owed money by FLM and -- I don't recall exactly how this took place.

In any event, I had a conversation with Mr. Pollack, with Mr. Collins of the Lincoln Mercury division, who was the district manager for Lincoln Mercury, and at that

time Mr. Pollack questioned the sales to FLM with regard to profitability and credit exposure and indicated that he didn't believe this business was economic -- an economic opportunity for him because of the credit exposure.

I pointed out, I talked to him in terms of the policy with regard to eligibility at that time, and Mr. Pollack indicated that Central was owed a substantial amount of money by FLM and unless he received incentives for those sales FLM had indicated that they would not pay the amount of moneys which they had been owed.

Q What did you say to him in reference to the eligibility of FLM?

A. I said that I didn't believe that the policy at that time would make FLM an eligible customer, that I thought that they were ineligible.

Q For what reason?

A. Because they were not engaged in automotive service or repair work as spelled out in the policy.

Q What was the date of that?

A. The date of the change?

Q The date of the discussion.

A. It was the fall of '72. I don't know the exact date.

Q Under those exact circumstances because of the policy you felt that FLM was ineligible so that Atlas would not be able to receive the wholesale incentive if they sold to them; true?

A Under those circumstances as outlined by Mr. Pollack, right.

Q What were the circumstances that Mr. Pollack outlined about FLM that in your mind made them ineligible?

A He indicated that they, the customer, his customer, FLM, was not engaged in automotive service or repair, that he was essentially selling other people.

Q Other people meaning whom?

A Ford and Lincoln Mercury dealers and body shops, to the best of my knowledge.

Q If he didn't sell other Ford and Lincoln Mercury dealers but he just sold body shops, would that still make him ineligible at that time?

A Within the framework of that policy, yes.

Q In the framework of that policy, you are referring to 3g of Plaintiff's 4 for identification, starting off saying, "Sales to any customer not engaged in automotive service"?

A Yes.

the name of the customer to whom the dealer is selling?

A. No, it has not.

Q. Are there still periodic audits of franchise dealers conducted by Ford?

A. Yes.

Q. Until today?

A. Until today, right.

Q. Did you have any other conversations with Mr. Pollack in reference to FLM other than the one that you have just told us?

A. Yes. I had a phone conversation with him.

Q. What was that and when?

A. Again it was in the fall of '72, and -- at that time I informed him that we were going to allow the incentives that he had applied for for a specific period of time as a result of what he had indicated to us was a hardship and would result in his losing his business because FLM had threatened not to pay their bills unless they received the incentives.

Q. For what period of time was that?

A. Some number of months, but -- I don't recall the exact number.

Q. Does Atlas presently deal with FLM?

A. I have no idea.

Q. Did he discuss with you how he could continue in a relationship?

A. We discussed the policy as regards to eligible customers, and how he would be an eligible customer under certain circumstances if he met the qualifications.

Q. What was that discussion about, how he could be an eligible customer?

A. These were suggestions that he had made regarding becoming a dealer possibly at some future date.

Q. A franchise dealer?

A. Yes.

Q. In other words, the only discussion you had in reference to his becoming eligible was for him to become a franchise dealer?

A. Yes, I believe I told him at that time that that was the only way that I could see, that he become a partner and in effect a franchise dealer.

Q. In effect, if he merged with a franchise dealer?

A. Correct.

Q. So because of the eligibility requirements as in effect at that time, the only way you saw was the fact of him becoming a franchise dealer for him to be able to deal with Ford?

A. When you say for him to be able to deal with Ford, or to deal with one of our dealers?

Q. Yes.

A. Yes.

Q. At any time subsequent to May of 1970, did you receive any reports from any franchise dealers in reference to sales to FLM?

MR. MAC CRATE: May I have the dates, please?

MR. SCHLESINGER: Subsequent to 1970.

THE WITNESS: May I hear it again?

Q. Subsequent to 1970, did you receive any reports from any franchise dealers in reference to sales or attempted sales to FLM?

A. Yes, Atlas.

Q. Was that the discussion that you told us about?

A. That is correct.

Q. Did you request from anyone information concerning sales to FLM?

A. I had already been given information by Mr. Pollack.

Q. Other than what you had been given by Mr. Pollack, did you request either in writing or orally

PX 112 Form of Ford Sales and Service Agreement
(undated)

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# FORD SALES & SERVICE AGREEMENT

Ford Marketing Corporation
Ford Division

Ford Marketing Corporation

...District

# Ford Sales and Service Agreement

AGREEMENT made as of the _____ day of _____, 19____,

by and between _____

_____

doing business as _____

and with a principal place of business at _____

_____

(hereinafter called the "Dealer") and Ford Marketing Corporation, a Delaware corporation with its principal place of business at Dearborn, Michigan (hereinafter called the "Company").

## PREAMBLE

The purpose of this agreement is to (i) establish the Dealer as an authorized dealer in COMPANY PRODUCTS including VEHICLES (as herein defined), (ii) set forth the respective responsibilities of the Company in producing and selling those products to the Dealer and of the Dealer in re-selling and providing service for them and (iii) recognize the interdependence of both parties in achieving their mutual objectives of satisfactory sales, service and profits by continuing to develop and retain a broad base of satisfied owners of COMPANY PRODUCTS.

In entering into this agreement, the Company and the Dealer recognize that the success of the Company and of each of its authorized dealers depends largely on the reputation and competitiveness of COMPANY PRODUCTS and dealers' services, and on how well each fulfills its responsibilities under this agreement.

It is the opinion of the Company that sales and service of COMPANY PRODUCTS usually can best be provided to the public through a system of independent franchised dealers, with each dealer fulfilling his responsibilities in a given locality from properly located, adequate, well-equipped and attractive dealerships, which are staffed by competent personnel and provided with the necessary working capital. The Dealer recognizes that, in such a franchise system, the Company must plan for the establishment and maintenance of the numbers, locations and sizes of dealers necessary for satisfactory and proper sales and service representa-



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tion in each market area as it exists and as it develops and changes. At the same time, the Company endeavors to provide each of its dealers with a reasonable profit opportunity based on the potential for sales and service of COMPANY PRODUCTS within his locality.

The Company endeavors to make available to its dealers a variety of quality products, responsive to broad wants and needs of the buying public, which are attractively styled, of sound engineering design and produced on a timely basis at competitive prices. The development, production and sale of such products require that the Company and its manufacturing sources make large continuing investments in plants, equipment, tools and other facilities, engineering and styling research and development, quality control procedures, trained personnel and marketing programs. Heavy commitments must also be made in advance for raw materials and finished parts. For purposes of making these investments and commitments, planning production and estimating costs for setting prices, the Company assumes in advance an estimated volume of sales for each of its products. Within each year, it develops monthly production schedules from basic orders submitted by its franchised dealers for the following month and its and their best estimates of the market for subsequent months.

In turn, each of the Company's franchised dealers makes important investments or commitments in retail sales and service facilities and equipment, in working capital, in inventories for vehicles, parts and accessories, and trained sales and service personnel based on annual planning volumes for their markets.

If satisfactory volumes for either the Company or a dealer are not realized, each may suffer because of commitments already made and the cost of manufacturing and of selling each product may be increased. Each month each dealer must forecast and give the Company a basic order for the products needed to serve his market. During the month each dealer should submit specific orders for products covered by his basic order. If dealers' specific orders for any product are greater than or different from their basic orders, the Company seeks to revise production schedules to the extent feasible, and to allocate fairly any product in short supply, but inevitably both the Company and its dealers suffer loss of profits to the extent they cannot meet market demands. Thus, the automotive business is a high risk business in which the Company, its manufacturing sources and its dealers can succeed only through cooperative and competitive effort in their respective areas of manufacturing, sales, service and customer satisfaction.

Since it is the dealer who deals directly with, and develops the sale of COMPANY PRODUCTS to, the consuming public, the Company substantially relies on its dealers to provide successful sales and merchandising programs, competent service operations and effective owner relations programs. To do this, dealers must carry out their responsibilities of establishing and maintaining adequate wholesale and retail finance plans, new and used vehicle sales programs, parts and service sales programs, personnel training and supportive capitalization and working capital. To assist its dealers in these responsibilities, the Company establishes and periodically updates standards of operation and planning guides based on its experience and current conditions. It also offers sales and service training courses, advice as to facilities, counseling in the various phases of dealership operations and, through other agreements and the activities of its affiliates, assistance in financing, new and used vehicle merchandising, parts and service merchandising, leasing, daily rentals and facilities development. It also conducts national advertising, promotional and other marketing programs and assists dealers in developing complementary group and individual programs.

To enable the Company to provide such assistance, it requires dealers to submit uniform and accurate sales, operating and financial reports from which it can derive and disseminate analytical and comparative operating data and advice to dealers. The Company also solicits dealers to bring to its attention through their National Dealer Council organization any mutual dealer problems or complaints as they arise.

Because the Company relies heavily on its dealers for success, it reserves the right to cease doing business with any dealer who is not contributing sufficiently to such success. Similarly, the Company recognizes that its dealers look to it to provide competitive products and programs and that, if it does not do so, any dealer may elect to cease doing business with the Company.

The Company has elected to enter into this agreement with the Dealer with confidence in the Dealer's integrity and ability, his intention to carry out his responsibilities set forth in this agreement, and his desire

to provide courteous, competent and satisfying sales and service representation to consumers for COMPANY PRODUCTS, and in reliance upon his representations as to the persons who will participate in the ownership and management of the dealership.

The Dealer has elected to enter into this agreement with the Company with confidence in its integrity and ability, its intention to provide competitive products and assist the Dealer to market them successfully, and its desire to maintain high quality dealers.

Both parties recognize that the rights of the Dealer and the Company under this agreement are defined and limited by the terms of this agreement and applicable law.

The Company and the Dealer further acknowledge that their methods of operation and business practices have an important effect on the reputation of the Dealer, the Company, COMPANY PRODUCTS and other franchised dealers of the Company. The Company and the Dealer also acknowledge that certain practices are detrimental to their interests, such as deceptive, misleading or confusing advertising, pricing, merchandising or business practices, or misrepresenting the characteristics, quality, condition or origin of any item of sale.

It is the expectation of each of the parties that by entering into this agreement, and by the full and faithful observance and performance of its duties, a mutually satisfactory relationship will be established and maintained.

IN CONSIDERATION of the mutual agreements and acknowledgements hereinafter made, the parties hereto agree as follows:

**A.** The Company hereby appoints the Dealer as an authorized dealer at retail in VEHICLES and at retail and wholesale in other COMPANY PRODUCTS and grants the Dealer the privilege of buying COMPANY PRODUCTS from the Company for sale in its DEALERSHIP OPERATIONS (as herein defined). The Company also grants to the Dealer the privilege of displaying, at approved location(s), the Company's trademarks and trade names applicable to COMPANY PRODUCTS. The Dealer hereby accepts such appointment.

**B.** Subject to and in accordance with the terms and conditions of this agreement, the Company shall sell COMPANY PRODUCTS to the Dealer and the Dealer shall purchase COMPANY PRODUCTS from the Company.

**C.** The Ford Marketing Corporation Ford Sales and Service Agreement Standard Provisions (Form "FD925-A GEN. SALE 4-72"), a duplicate original of which is attached to the Dealer's duplicate original of this agreement, have been read and agreed to by the Company and by the Dealer, and such Standard Provisions and any duly executed and delivered supplement or amendment thereto, are hereby made a part of this agreement with the same force and effect as if set forth herein in full.

**D.** This agreement shall bind the Company when it bears the facsimile signature of the General Manager, and the manual countersignature of the General Sales Manager, Market Representation Manager, or a Regional or District Sales Manager, of the Ford Division of the Company and a duplicate original thereof is delivered personally or by mail to the Dealer or the Dealer's principal place of business.

**E.** The Dealer acknowledges that (i) this agreement may be executed only in the manner provided in paragraph D hereof, (ii) no one except the General Manager, the General Sales Manager, or Market Representation Manager of the Ford Division of the Company, or the Secretary or an Assistant Secretary of the Company, is authorized to make or execute any other agreement relating to the subject matter hereof on behalf of the Company, or in any manner to enlarge, vary or modify the terms of this agreement, and then only by an instrument in writing, and (iii) no one except the General Manager of the Ford Division of the Company, or the Secretary or an Assistant Secretary of the Company, is authorized to terminate this agreement on behalf of the Company, and then only by an instrument in writing.

**F.** In view of the personal nature of this agreement and its objectives and purposes, the Company expressly reserves to itself the right to execute a Ford Sales and Service Agreement with individuals or other entities specifically selected and approved by the Company. Accordingly, this agreement and the rights and privileges conferred on the Dealer hereunder are not transferable, assignable or salable by the Dealer and no property right or interest, direct or indirect, is sold, conveyed or transferred to the Dealer under this agreement. This agreement has been entered into by the Company with the Dealer in reliance (i) upon the representation and

agreement that the following person(s), and only the following person(s), shall be the principal owners of the Dealer:

| NAME | HOME ADDRESS | PERCENTAGE OF INTEREST |
|---|---|---|
| | | |
| | | |
| | | |

(ii) upon the representation and agreement that the following person(s), and only the following person(s), shall have full managerial authority for the operating management of the Dealer in the performance of this agreement:

| NAME | HOME ADDRESS | TITLE |
|---|---|---|
| | | |
| | | |
| | | |

and (iii) upon the representation and agreement that the following person(s), and only the following person(s), shall be the remaining owners of the Dealer:

| NAME | HOME ADDRESS | PERCENTAGE OF INTEREST |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

The Dealer shall give the Company prior notice of any proposed change in the said ownership or managerial authority, and immediate notice of the death or incapacity of any such person. No such change or notice, and no assignment of this agreement or of any right or interest herein, shall be effective against the Company unless and until embodied in an appropriate amendment to or assignment of this agreement, as the case may be, duly executed and delivered by the Company and by the Dealer. The Company shall not unreasonably withhold its consent to any such change.

**G.** (Strike out either subparagraph (1) or (2) whichever is not applicable.)

(1) This agreement shall continue in force and effect from the date of its execution until terminated by either party under the provisions of paragraph 17 hereof.

(2) This agreement shall continue in force and effect for a term commencing on the date of its execution and expiring _____ unless sooner terminated under the provisions of paragraph 17 hereof.

**H.** Both the Company and the Dealer assume and agree to carry out and perform their respective responsibilities under this agreement.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement in duplicate as of the day and year first above written.

Ford Marketing Corporation

.....
(Dealer's Trade Name)

General Manager, Ford Division

By .....

Countersigned by

(Title) .....

agreement ... entered into by the Company with the Dealer in ...

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Ford Marketing Corporation

# FORD SALES AND SERVICE AGREEMENT
# STANDARD PROVISIONS

*DEFINITIONS*

1. As used herein, the following terms shall have the following meanings, respectively:

1. (a) "COMPANY PRODUCTS" shall mean such

(1) new passenger cars,

(2) new trucks and chassis, excluding all diesel trucks and chassis and all trucks and chassis of series 850 or higher designations, and

(3) parts and accessories therefor,

as from time to time are offered for sale by the Company to all authorized Ford dealers as such for resale, plus such other products as may be offered for sale by the Company to the Dealer from time to time. The Company reserves the right to offer any new, different and differently designated passenger car, truck or chassis, and any other product, bearing any trademarks or brand names used or claimed by the Company or Ford Motor Company or any of its subsidiaries, including the name "Ford", to selected authorized Ford dealers or others under existing or separate new agreements; provided, however, that the Company shall not franchise any such new passenger car bearing the name "Ford" (other than the Ford script-in-oval corporate form of trademark) to anyone who is not an authorized Ford dealer.

1. (b) "CAR" shall mean any passenger car, and "TRUCK" shall mean any truck or chassis, included in this agreement pursuant to paragraph 1(a) above. "VEHICLE" shall mean any CAR or TRUCK and "VEHICLES" shall mean CARS and TRUCKS.

1. (c) "COMPETITIVE CARS" and "COMPETITIVE TRUCKS" shall mean those new cars and new trucks, respectively, not marketed by the Company which are selected by the Company as generally comparable with CARS and TRUCKS, respectively, in price and product characteristics.

1. (d) "INDUSTRY CARS" and "INDUSTRY TRUCKS" shall mean all new cars and all new trucks, respectively, of all manufacturers to the extent data therefor are reasonably available.

1. (e) "GENUINE PARTS" shall mean such parts, accessories and equipment for VEHICLES as are offered for sale by the Company from time to time to the Dealer.

1. (f) "DEALER PRICE" shall mean, with respect to each COMPANY PRODUCT to which it refers, the price to the Dealer for such product, as from time to time established by the Company, before deduction of any cash or other discount applicable thereto. It shall not includ amount in the nature of a predelivery or other holdback deposit or charge, any dealer associat ollection, any charge by the Company for distribution, delivery or taxes, or any other charge for special items or services.

*1. DEFINITIONS (Continued)*

**1. (g)** "VEHICLE TERMS OF SALE BULLETIN" shall mean the latest VEHICLE TERMS OF SALE BULLETIN and amendments thereto furnished to the Dealer from time to time by the Company setting forth the terms of sale and ordering procedures applicable to sales of VEHICLES to authorized Ford dealers.

**1. (h)** "PARTS AND ACCESSORIES TERMS OF SALE BULLETIN" shall mean the latest PARTS AND ACCESSORIES TERMS OF SALE BULLETIN and amendments thereto furnished to the Dealer from time to time by the Company setting forth the terms of sale and ordering procedures applicable to sales of GENUINE PARTS to authorized Ford dealers.

**1. (i)** "CUSTOMER SERVICE BULLETIN" shall mean the latest CUSTOMER SERVICE BULLETIN and amendments thereto furnished to the Dealer from time to time by the Company establishing standards for authorized Ford dealers with respect to service personnel, training, tools and equipment, for customer handling procedures and for evaluating the Dealer's service performance.

**1. (j)** "DEALER'S LOCALITY" shall mean the locality designated in writing to the Dealer by the Company from time to time as the area of the Dealer's sales and service responsibility for COMPANY PRODUCTS.

**1. (k)** "DEALERSHIP LOCATION" shall mean the place or places of business of the Dealer for carrying out this agreement which are approved by the Company as provided in paragraph 5 of this agreement.

**1. (l)** "DEALERSHIP FACILITIES" shall mean the land areas, buildings and improvements established at the DEALERSHIP LOCATION in accordance with the provisions of paragraph 5 of this agreement.

**1. (m)** "DEALERSHIP OPERATIONS" shall mean the sale of COMPANY PRODUCTS and used vehicles, service operations and (if the Dealer so elects) rental or leasing of VEHICLES, conducted by the Dealer at or from the DEALERSHIP FACILITIES.

**1. (n)** "CAR PLANNING VOLUME" and "TRUCK PLANNING VOLUME" shall mean the average annual estimated sales base for CARS and TRUCKS, respectively, established by the Company for the Dealer from time to time for planning purposes under its standard procedures for authorized Ford dealers in single or multiple DEALERS' LOCALITIES, as the case may be, based on historical sales and registrations, and current trends, in CARS, TRUCKS, COMPETITIVE CARS and TRUCKS and INDUSTRY CARS and TRUCKS in the DEALER'S LOCALITY. Consideration shall also be given to the environs of the DEALERSHIP LOCATION and market trends therein, consumer shopping habits, demographic factors and other appropriate data to the extent available and pertinent. Such terms shall not represent the actual sales volumes to be achieved by the Dealer to meet his responsibilities under paragraph 2 of this agreement.

**1. (o)** "PERCENT RESPONSIBILITY" shall mean the ratio of the Dealer's CAR PLANNING VOLUME, and of the Dealer's TRUCK PLANNING VOLUME, to the total CAR PLANNING VOLUMES and to the total TRUCK PLANNING VOLUMES, respectively, for all authorized Ford Dealers in the DEALER'S LOCALITY.

**(p)** "UIO" (units in operation) shall mean the CARS and TRUCKS of the next preceding three or more model years (as determined by the Company from time to time) licensed within the DEALER'S LOCALITY at a given time multiplied by the Dealer's PERCENT RESPONSIBILITY therefor.

*1. DEFINITIONS (Continued)*

1. (q) "GUIDES" shall mean such reasonable standards as may be established by the Company for the Dealer from time to time under its standard procedures for authorized Ford dealers (i) for DEALERSHIP FACILITIES and equipment, capitalization and net working capital based on such factors as CAR and TRUCK PLANNING VOLUMES, UIO, the DEALER'S LOCALITY and (ii) for inventories, personnel, demonstrators and other elements of DEALERSHIP OPERATIONS based on such factors as sales and service volumes.

*RESPONSIBILITIES WITH RESPECT TO VEHICLES*

2. (a) *Sales.* The Dealer shall promote vigorously and aggressively the sale at retail (and, if the Dealer elects, the leasing and rental) of CARS and TRUCKS to private and fleet customers within the DEALER'S LOCALITY, and shall develop energetically and satisfactorily the potentials for such sales and obtain a reasonable share thereof; but the Dealer shall not be limited to the DEALER'S LOCALITY in making sales. To this end, the Dealer shall develop, maintain and direct a trained, quality vehicle sales organization and shall conduct throughout each model year aggressive advertising and sales promotion activities, making use to the greatest feasible extent of the Company's advertising and sales promotion programs relating to VEHICLES.

The Dealer's performance of his sales responsibility for CARS shall be measured by such reasonable criteria as the Company may develop from time to time, including:

(1) Dealer's sales of CARS to private and fleet users located in the DEALER'S LOCALITY as a percentage of:

(i) all private and all fleet registrations of CARS in the DEALER'S LOCALITY,

(ii) all private and all fleet registrations of COMPETITIVE CARS in the DEALER'S LOCALITY,

(iii) all private and all fleet registrations of INDUSTRY CARS in the DEALER'S LOCALITY, and

(iv) the private and fleet sales objectives for CARS established by the Company for the Dealer from time to time.

(2) If the Dealer is not the only authorized dealer in CARS in the DEALER'S LOCALITY, the following factors shall be used in computing percentages pursuant to 2(a) (1) above:

(i) The Dealer's sales of CARS to users located in the DEALER'S LOCALITY shall be deemed to be the total registrations thereof in the DEALER'S LOCALITY multiplied by the Dealer's percent of sales of all CARS made by all authorized Ford dealers located in the DEALER'S LOCALITY unless the Dealer or the Company shows that the Dealer actually has made a different number of such sales,

(ii) The registrations of CARS and COMPETITIVE and INDUSTRY CARS in the DEALER'S LOCALITY against which the Dealer shall be measured shall be the total thereof multiplied by the Dealer's PERCENT RESPONSIBILITY, and

(iii) The Dealer's objectives for CARS shall be the total objectives therefor of all authorized Ford dealers in the DEALER'S LOCALITY multiplied by the Dealer's PERCENT RESPONSIBILITY.

(3) A comparison of each such percentage with percentages similarly obtained for all other authorized Ford dealers combined in the Company's sales zone and district in which the Dealer is located, and where subparagraph 2(a) (2) applies, for all other authorized Ford dealers combined in the DEALER'S LOCALITY.

*2. RESPONSIBILITIES WITH RESPECT TO VEHICLES (Continued)*

(4) In evaluating any comparisons provided for in subparagraph 2(a) (3) above, the Company shall give consideration to the availability of CARS to the Dealer and other authorized Ford dealers and any special local marketing conditions that might affect the Dealer's sales performance differently from the sales performance of COMPETITIVE or INDUSTRY CAR dealers or other authorized Ford dealers.

(5) The sales and registration data referred to in this subparagraph 2(a) shall include sales to and registrations in the name of leasing and daily rental operations and shall be those utilized in the Company's records or in reports furnished to the Company by independent sources selected by it and generally available for such purpose in the automotive industry. In the event such reports of the registrations and or sales of INDUSTRY or COMPETITIVE CARS in the DEALER'S LOCALITY are not generally available, the evaluation of the Dealer's sales performance shall be based on such registrations and or sales or purchase data as can be reasonably obtained by the Company.

The Dealer's performance of his sales responsibility for TRUCKS shall be determined in the same manner as for CARS.

The Company will provide to the Dealer an evaluation of his performance under this subparagraph (2)(a) from time to time as initiated by the Company, or not more than once a month upon the written request of the Dealer.

2. (b) *Orders.*

(1) To enable the Company to plan for and establish, and its manufacturing sources to carry out, production schedules, the Dealer shall, on the dates and forms provided by the Company, furnish the Company basic orders for types of VEHICLES and specific orders for individual VEHICLES against the applicable basic order as specified in the applicable VEHICLE TERMS OF SALE BULLETIN.

(2) The Company is authorized to have installed on any VEHICLE ordered by the Dealer any equipment or accessory required by any applicable federal, state or local law, rule, or regulation.

(3) Any order for a VEHICLE not shipped during the month for which delivery was scheduled will remain in effect unless cancelled by the Dealer or the Company by written notice to the other. An order for an "off standard" VEHICLE may be cancelled only by or with the consent of the Company. Any VEHICLE which differs from the Company's standard specifications, or which incorporates special equipment, shall be considered an "off standard" VEHICLE.

(4) The Dealer shall not be liable to the Company for any failure to accept shipments of VEHICLES ordered from the Company where such failure is due to any labor difficulty at the DEALERSHIP LOCATION or to any cause beyond the Dealer's control or without the Dealer's fault or negligence.

2. (c) *Consideration of Orders.*

(1) The Company may reject orders not submitted in accordance with subparagraph 2(b)(1) above. The Company shall make reasonable efforts to fill each order of the Dealer that is accepted by the Company. During any period of shortage of any VEHICLE, the Company shall be entitled to give priority to accepted orders for such VEHICLES for resale to users residing within the DEALER'S LOCALITY of the ordering dealer.

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*2. RESPONSIBILITIES WITH RESPECT TO VEHICLES (Continued)*

(2) The Company shall not be liable to the Dealer in any respect for failure to ship or for delay in shipment of accepted orders for VEHICLES where such failure or delay is due wholly or in part to (i) shortage or curtailment of material, labor, transportation, or utility services, (ii) any labor or production difficulty in any of its own or any of its suppliers' locations, (iii) any governmental action, or (iv) any cause beyond the Company's control or without its fault or negligence.

**2. (d)** ***Stocks.*** The Dealer shall maintain stocks of current models of such lines or series of VEHICLES, of an assortment and in quantities as are in accordance with Company GUIDES therefor, or adequate to meet the Dealer's share of current and anticipated demand for VEHICLES in the DEALER'S LOCALITY. The Dealer's maintenance of VEHICLE stocks shall be subject to the Company's filling the Dealer's orders therefor.

**2. (e)** ***Demonstrators.*** The Dealer shall maintain at all times in good condition and running order for demonstration and loan to prospective purchasers, such numbers of the latest model of such lines or series of VEHICLES as are in accordance with Company GUIDES therefor.

**2. (f)** ***Factory Suggested Price Labels.*** If any CAR is delivered by the Company to the Dealer with an incorrect label, or without a completed label, affixed thereto pursuant to the Federal Automobile Information Disclosure Act, the Dealer shall promptly complete and affix to such CAR a correct label on the form and in accordance with the directions furnished by the Company.

**2. (g)** ***Owner Literature.*** The Dealer shall, in accordance with the Company's instructions, complete, execute and deliver to each retail purchaser of a VEHICLE from him the Company's then current publications for owners with respect to the operation, maintenance and warranty of that VEHICLE (hereinafter called "Owner's Literature"). The Dealer shall fulfill promptly all dealer responsibilities under each piece of the Owner's Literature delivered by him. The Company may specify in the Owner's Literature that the Dealer will perform certain inspections of the VEHICLE. The Dealer authorizes the Company to charge his account for work done by another Company authorized CAR or TRUCK dealer under the Owner's Literature delivered by the Dealer, and to credit his account for work done by him under Owner's Literature delivered by another Company authorized CAR or TRUCK dealer. The charge or credit shall be in the amount specified by the Company from time to time.

**2. (h)** ***Rebates and Allowances.*** The Dealer shall be entitled to such rebates and allowances from the Company on VEHICLES and factory-installed options, subject to such conditions and procedures, as may be specified in the applicable VEHICLE TERMS OF SALE BULLETIN or other notice pertaining thereto sent to the Dealer by the Company, provided that any change in the model close-out allowance shall be announced to the Dealer prior to the Company's solicitation of the build-out order.

**2. (i)** ***Warranty.*** The Company shall from time to time establish, by notice to the Dealer, the warranty to the owner applicable to each VEHICLE. There shall be NO OTHER WARRANTY, express or implied, including any warranty of MERCHANTABILITY OR FITNESS, or any other obligation of the Company to the Dealer or the owner with respect to the VEHICLE or any part thereof except the warranty establi-hed pur-uant to this subparagraph. The Dealer shall expressly incorporate such warranty as a part of each buyer's order form or other contract for the sale of a VEHICLE and shall deliver a copy of the warranty, in the form furni-hed by the Company, to the owner at the time the VEHICLE is delivered to the owner, all in accordance with instructions set forth in the Company's then current Warranty and Policy Manual and supplements thereto (hereinafter called "Warranty Manual").



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## *RESPONSIBILITIES WITH RESPECT TO GENUINE PARTS*

**3. (a)** ***Sales.*** The Dealer shall promote vigorously and aggressively the sale of GENUINE PARTS to service, wholesale and other customers within the DEALER'S LOCALITY, and shall develop energetically and satisfactorily the potentials for such sale and obtain a reasonable share thereof; but the Dealer shall not be limited to the DEALER'S LOCALITY in making sales. To this end, the Dealer shall develop, maintain and direct a trained quality parts sales organization and shall conduct aggressive advertising and sales promotion activities, making use to the greatest feasible extent of the Company's advertising and sales promotion programs relating to GENUINE PARTS. The Dealer shall not sell or offer for sale or use in the repair of any COMPANY PRODUCT, as a GENUINE PART, any part or accessory that is not in fact a GENUINE PART.

The Dealer's performance of his sales responsibility for GENUINE PARTS shall be measured by such reasonable criteria as the Company may develop from time to time including:

(1) His sales as a percentage of the sales objectives established for him by the Company from time to time, and his sales per UIO, and

(2) A comparison of such percentage and sales per UIO with the percentage similarly obtained and sales per UIO of all other authorized Ford dealers combined in one or more of the following: (i) the DEALER'S LOCALITY, (ii) the Company's sales or service zone, and (iii) the district in which the Dealer is located; as the Company may determine.

**3. (b)** ***Orders.***

(1) Stock orders for the Dealer's requirements of GENUINE PARTS shall be furnished to the Company by the Dealer in accordance with the applicable PARTS AND ACCESSORIES TERMS OF SALE BULLETIN.

(2) Any order for a GENUINE PART not shipped in accordance with normal shipping schedules will remain in effect unless cancelled by the Dealer or the Company by written notice to the other.

(3) The Dealer shall not be liable to the Company for any failure to accept shipment of GENUINE PARTS ordered from the Company where such failure is due to any labor difficulty in the Dealer's place of business or to any cause beyond the Dealer's control or without the Dealer's fault or negligence.

**3. (c)** ***Consideration of Orders.***

(1) The Company shall make reasonable efforts to fill each order of the Dealer that is accepted by the Company.

(2) The Company shall not be liable to the Dealer in any respect for failure to ship or for delay in shipment of accepted orders for GENUINE PARTS where such failure or delay is due wholly or in part to (i) shortage or curtailment of material, labor, transportation or utility services, (ii) any labor or production difficulty in any of its own or any of its suppliers' locations, (iii) any governmental action or (iv) any cause beyond the Company's control or without its fault or negligence.

**3. (d)** ***Stocks.*** The Dealer shall maintain a stock of parts, including GENUINE PARTS, in accordance with Company GUIDES therefor, and of an assortment in quantities adequate to meet the current and anticipated demand therefor. The Dealer's maintenance of stocks of GENUINE PARTS shall be subject to the Company's filling the Dealer's orders therefor.

**3. (e)** ***Returns and Allowances.*** The Dealer shall be entitled to such allowances, discounts, incentives and return privileges from the Company on GENUINE PARTS subject to such conditions and procedures as may be specified in the applicable PARTS AND ACCESSORIES

*3. RESPONSIBILITIES WITH RESPECT TO GENUINE PARTS (Cont.)*

TERMS OF SALE BULLETIN or other notice pertaining thereto sent to the Dealer by the Company.

**3. (f)** *Warranty.* The Company shall from time to time establish, by notice to the Dealer, the warranty applicable to each GENUINE PART. There shall be NO OTHER WARRANTY, express or implied, including any warranty of MERCHANTABILITY OR FITNESS, or any other obligation of the Company to the Dealer or the customer with respect to any GENUINE PART or any part thereof except the warranty established pursuant to this subparagraph. The Dealer shall expressly incorporate such warranty as a part of each sale of a GENUINE PART, in accordance with instructions set forth in the Warranty Manual.

*RESPONSIBILITIES WITH RESPECT TO SERVICE*

**4.** The Dealer shall develop, maintain and direct a trained, quality service organization and render at the DEALERSHIP FACILITIES prompt, workmanlike, courteous and willing service to owners and users of COMPANY PRODUCTS, in accordance with the standards and procedures set forth in the applicable CUSTOMER SERVICE BULLETIN, including without limitation all service to which a purchaser of a COMPANY PRODUCT from any authorized Ford dealer may be entitled.

**4. (a)** *Predelivery Service.* The Dealer shall perform or be responsible for the performance of such inspection, conditioning and repair of each VEHICLE before delivery as may be prescribed for such VEHICLE in the Company's applicable predelivery inspection and conditioning schedules furnished by the Company to the Dealer. The Dealer shall maintain or be responsible for the maintenance of adequate records of all predelivery inspection, conditioning and repair work performed by or for the Dealer.

**4. (b)** *Warranty and Policy and Campaign Service.*

(1) The Dealer shall perform all warranty and policy service on each COMPANY PRODUCT sold by the Dealer, or presented by "visiting owners" (those whose selling dealer has ceased to do business, or who are travelling, or have moved a long distance from their selling dealer or need emergency repairs), in accordance with the warranty and policy applicable thereto and the applicable provisions of the Warranty Manual and CUSTOMER SERVICE BULLETIN.

(2) The Dealer shall perform campaign inspections and/or corrections for owners and users of all VEHICLES, subject to the campaign instructions issued by the Company from time to time and the applicable provisions of the Warranty Manual. The Company may ship parts in quantity to the Dealer to effect such campaign work and if such parts are in excess of the Dealer's requirements, the Dealer may return unused parts to the Company for credit after completion of the campaign.

(3) The Dealer shall use only GENUINE PARTS in performing warranty, policy and campaign work, except as otherwise provided in the Warranty Manual, CUSTOMER SERVICE BULLETIN or campaign instructions, and shall give precedence to all such work over other service work if the use of the vehicle is impaired. The Dealer shall promptly report to the Company, and seek the Company's assistance with respect to, any warranty or policy or campaign work which cannot be performed to the owner's or the Dealer's satisfaction. The Company shall give precedence to such requests over other service assistance. The Dealer shall provide the owner with a copy of the repair order for such work itemizing the work performed. The Dealer shall have such repair

## 4. *RESPONSIBILITIES WITH RESPECT TO SERVICE (Continued)*

order signed by the owner except in unusual circumstances where it is not feasible to obtain such signature.

(4) The Dealer shall submit claims to the Company for reimbursement for the parts and labor used in performing warranty, policy and campaign work and the Company shall reimburse the Dealer therefor, in accordance with the provisions of the Warranty Manual or campaign instructions and the Dealer's approved warranty labor rate. The Dealer shall maintain adequate records and documents supporting such claims in accordance with the provisions of the Warranty Manual.

4. (c) ***Maintenance and Repair Service.*** The Dealer shall perform all other maintenance and repair services, including, where feasible, body repair services, reasonably required by owners and users of VEHICLES and shall provide each customer a copy of the repair order itemizing the work performed and the charges therefor. The Dealer shall have the customer sign such repair order except in unusual circumstances where it is not feasible to obtain such signature.

4. (d) ***Service Tools and Equipment.*** The Dealer shall acquire and maintain for use in DEALERSHIP OPERATIONS such diagnostic equipment and other tools, equipment and machinery, comparable to the type and quality recommended by the Company from time to time, as are necessary to meet the Dealer's service responsibilities hereunder and substantially in accordance with Company GUIDES therefor and the applicable CUSTOMER SERVICE BULLETIN.

## *RESPONSIBILITIES WITH RESPECT TO DEALERSHIP FACILITIES*

5. (a) ***Locations and Facilities.*** The Dealer shall establish and maintain at the DEALERSHIP LOCATION approved by the Company DEALERSHIP FACILITIES of satisfactory appearance and condition and adequate to meet the Dealer's responsibilities under this agreement. The DEALERSHIP FACILITIES shall be substantially in accordance with the GUIDES therefor established by the Company from time to time.

5. (b) ***Dealership Facilities Supplement.*** The Dealer and the Company have executed, as a part of and simultaneously with this agreement, a Dealership Facilities Supplement which includes a description of all of the DEALERSHIP LOCATION and FACILITIES, the GUIDES therefor as of the date of this agreement and the purpose for which each shall be used.

5. (c) ***Changes and Additions.*** The Dealer shall not move or substantially modify or change the usage of any of the DEALERSHIP LOCATION or FACILITIES for COMPANY PRODUCTS, nor shall the Dealer or any person named in subparagraphs F(i) or F(ii) hereof directly or indirectly establish or operate in whole or in part any other locations or facilities for the sale or service of COMPANY PRODUCTS or the sale of used vehicles without the prior written consent of the Company. Any such change shall be evidenced by a new Dealership Facilities Supplement executed by the Dealer and the Company. To ensure that all data included on the Dealership Facilities Supplement are reasonably accurate, the Company and the Dealer shall execute a new Dealer-hip Facilities Supplement at least once every five (5) years.

5. (d) ***Company Assistance.*** To assist the Dealer in planning, establishing and maintaining DEALERSHIP LOCATION[illegible] FACILITIES in accordance with his responsibilities under this agreement, the Company will [illegible]e available, at the request of the Dealer, and at a mutually convenient time and place, personnel to provide counsel and advice regarding location and facility planning, including layout and design.

## *5. RESPONSIBILITIES WITH RESPECT TO DEALERSHIP FACILITIES (Continued)*

**5. (e)** ***Fulfillment of Responsibility.*** The Dealer shall be deemed to be fulfilling his responsibilities under this paragraph 5 when and as long as the DEALERSHIP LOCATION is approved by the Company and the DEALERSHIP FACILITIES are substantially in accordance with the current GUIDES therefor. The execution of this agreement or of any Dealership Facilities Supplement shall not of itself be construed as evidence of the fulfillment by the Dealer of his responsibilities to provide adequate DEALERSHIP LOCATION and FACILITIES.

## *OTHER DEALER AND COMPANY RESPONSIBILITIES*

**6. (a)** ***Signs.*** The Dealer shall install and maintain at the DEALERSHIP LOCATION signs of good appearance and adequate to identify such locations as (1) authorized sales and service establishments for VEHICLES and other COMPANY PRODUCTS identifying such products as products of the Company, (2) authorized sales locations for used vehicles and (3) authorized locations for the leasing or rental of vehicles, as the case may be. Each sign shall be compatible with the design standards established by the Company from time to time and shall be subject to the Company's approval with respect to any display of any trademark or trade name used or claimed by the Company or Ford Motor Company or any of its subsidiaries. Fulfillment of any separate Dealership Identification Agreement between the Dealer and the Company shall be deemed fulfillment of this subparagraph 6(a). The Company will make available, at the request of the Dealer, and at a mutually convenient time and place, personnel to provide counsel and advice regarding dealership signs and identification.

**6. (b)** ***Personnel.*** The Dealer shall employ and train such numbers and classifications of competent personnel of good character, including, without limitation, sales, parts, service, owner relations and other department managers, salesmen and service technicians, as will enable the Dealer to fulfill all his responsibilities under this agreement. The Company shall provide assistance to the Dealer in determining personnel requirements. In response to the training needs of the Dealer's personnel, the Dealer at his expense shall cause his personnel to attend training schools or courses conducted by the Company from time to time.

**6. (c)** ***Dealer Residence.*** Effective operation of the Dealer's business is dependent in large part on the Dealer's management becoming a part of and accepted within his local community. Accordingly, each person named in subparagraph F(ii) hereof shall (unless otherwise approved in writing by the Company because of individual circumstances) reside within the DEALER'S LOCALITY.

**6. (d)** ***Capital.*** The Dealer shall at all times maintain and employ in connection with his DEALERSHIP OPERATIONS separately from any other business of the Dealer, such total investment, net working capital, adequate lines of wholesale credit and competitive retail financing plans for VEHICLES as are in accordance with Company GUIDES therefor and will enable the Dealer to fulfill all his responsibilities under this agreement. The Dealer's net working capital shall not be less than the amounts specified in the Net Working Capital Agreement executed by the Dealer and the Company, as a part of and simultaneously with this agreement, as modified or superseded from time to time.

**6. (e)** ***Accounting System.*** It is in the mutual interests of the Dealer and the Company that uniform accounting systems and practices be maintained by the Company's authorized dealers in order that the Company may develop and disseminate helpful information, evaluate the relative

## 6. OTHER DEALER AND COMPANY RESPONSIBILITIES (Continued)

operating performance of each dealer and develop criteria that will enable the Company to formulate plans and policies in the interests of its dealers and the Company and that will assist each dealer to obtain satisfactory results from his dealership operations. Accordingly, the Dealer shall install and use in his DEALERSHIP OPERATIONS, whether conducted as one or several business entities, an accounting system not exclusive of any other system the Dealer may wish to use, in accordance with the Company's Manual of Dealer Accounting Procedures as amended from time to time.

6. (f) *Financial Reports.* In furtherance of the mutual interests set forth in paragraph 6(e) hereof, the Dealer shall furnish to the Company each month, at the time and on the forms prescribed by the Company, a complete statement reflecting the true financial condition and the month and year-to-date operating results of his DEALERSHIP OPERATIONS as of the end of the preceding month. The Dealer also shall promptly furnish to the Company a copy of any adjusted annual statement that may be prepared by or for the Dealer. All such statements, reports and data shall be based whenever applicable upon the accounting system installed and used by the Dealer in accordance with subparagraph 6(e). Financial information furnished by the Dealer shall be handled on a confidential basis by the Company and, unless authorized by the Dealer or required by law, or offered in evidence in judicial or arbitration proceedings, shall not be furnished, except as an unidentified part of a composite or coded report, to any party outside of the Company and Ford Motor Company.

6. (g) *Delivery and Sales Reports.* To assist the Company in evaluating current sales and market trends, in advising its manufacturing sources of adjustments desired in production and distribution schedules, and in providing the type of information necessary to provide assistance and counsel to the Dealer, the Dealer shall (1) accurately complete the information prescribed on the vehicle delivery card and forward such card to the Company at or as soon as reasonably possible after the end of the day on which the new VEHICLE is delivered or sold, whichever shall occur first, to the private or fleet customer or to rental or leasing operations, if any, conducted or controlled by the Dealer, and (2) furnish the Company with accurate and complete delivery or sales reports and data relating to the Dealer and his DEALERSHIP OPERATIONS at the times and on such forms as the Company may specify from time to time.

6. (h) *Customer Handling.* The Dealer shall cooperate with Company programs, and develop and maintain his own programs, designed to develop good relationships between the Dealer and the public. The Dealer shall promptly investigate and handle all matters brought to his attention by the Company or the public relating to the sale or servicing of COMPANY PRODUCTS in the DEALER'S LOCALITY, in accordance with procedures set forth in the applicable CUSTOMER SERVICE BULLETIN, so as to develop public confidence in the Dealer, the Company and COMPANY PRODUCTS. The Dealer shall report promptly to the Company the details of each inquiry or complaint received by the Dealer relating to any COMPANY PRODUCT which the Dealer cannot handle satisfactorily. The Dealer shall not make, directly or indirectly, any false or misleading statement or representation to any customer as to any VEHICLE, GENUINE PART or other COMPANY PRODUCT as to the source, condition or capabilities thereof, or the Dealer's or the Company's prices or charges therefor or for distribution, delivery, taxes or other items.

6. (i) *Business Practices, Advertising and Programs.* The Dealer shall conduct DEALERSHIP OPERATIONS in a manner that will reflect favorably at all times on the reputation of the Dealer, other Company authorized dealers, the Company, COMPANY PRODUCTS and

*6. OTHER DEALER AND COMPANY RESPONSIBILITIES (Continued)*

trademarks and trade names used or claimed by the Company, Ford Motor Company or any of its subsidiaries. The Dealer shall avoid in every way any "bait", deceptive, misleading, confusing or illegal advertising or business practice. The Company shall not publish or employ any such advertising or practice or encourage any dealer or group of dealers to do so.

6. (j) *Compliance with Laws, Rules and Regulations.* The Dealer shall comply with all applicable federal, state, and local laws, rules and regulations in the ordering, sale and service of COMPANY PRODUCTS and the sale and service of used vehicles, including without limitation those related to motor vehicle safety, emissions control and customer service. The Company shall provide the Dealer, and the Dealer shall provide the Company, such information and assistance as may be reasonably requested by the other in connection with the performance of obligations under such laws, rules and regulations.

*DEALER'S RESPONSIBILITIES WITH RESPECT TO HOURS OF BUSINESS*

7. To the end that the needs of customers and owners served by the Dealer are fulfilled properly, the Dealer shall maintain DEALERSHIP OPERATIONS open for business during all hours and days which are customary in the trade and lawful for such operations in the DEALER'S LOCALITY.

*PURCHASES FROM OTHERS AND SALES TO OTHERS*

8. The Dealer reserves the right to make purchases from others without obligation or liability of any kind to the Company, provided that the Dealer shall not be relieved of any responsibility assumed by the Dealer under this agreement; and, except as otherwise expressly provided herein, the Company reserves the right to make sales to others (including without limitation to other dealers) without obligation or liability of any kind to the Dealer.

*DETERMINATION OF DEALER REPRESENTATION*

9. (a) *Representation Planning.* The Company reserves the right to determine, from time to time, in its best judgment, the numbers, locations and sizes of authorized dealers necessary for proper and satisfactory sales and service representation for COMPANY PRODUCTS within and without the DEALER'S LOCALITY. In making such determinations, the Company from time to time conducts, to the extent deemed adequate by the Company and subject to the ready availability of information, studies of the locality, including such factors as its geographic characteristics, consumer shopping habits, competitive representation patterns, sales and service requirements, convenience of customers or potential customers and past and future growth and other trends in marketing conditions, population, income, U.I.O. VEHICLE sales and registrations and COMPETITIVE and INDUSTRY CAR and TRUCK registrations.

9. (b) *Information to Dealer.* The Company will inform the Dealer of any proposed change in the Company's market representation plans for the DEALER'S LOCALITY, provided that if the Company's market representation plans do not provide for the continuation of representation of COMPANY PRODUCTS from the Dealer's DEALERSHIP FACILITIES (except for a relocation thereof), the Company shall not be obligated to inform other dealers thereof, but shall give the Dealer written notice thereof. If, in the Company's opinion, such changes should be disclosed to other dealers in connection with the Company's market representation plans for their respective DEALERSHIP OPERATIONS, the Company may inform such other dealers thereof, without liability to the Dealer, no earlier than thirty (30) days after such notice to the Dealer and shall inform such other dealers that the Dealer may maintain his DEALERSHIP OPERATIONS for so long as the Dealer desires and fulfills his responsibilities under this agreement.

*DETERMINATION OF DEALER REPRESENTATION (Continued)*

**9. (c)** *Additional Dealers.* The Company shall have the right to appoint additional dealers in VEHICLES within or without the DEALER'S LOCALITY except that, if an additional dealer will be within the DEALER'S LOCALITY and within ten (10) miles driving distance of the Dealer's principal place of business, the Company shall not appoint the additional dealer unless a study made pursuant to subparagraph 9(a) reasonably demonstrates, in the Company's opinion, that such appointment is necessary to provide VEHICLES with proper sales and service representation in such locality with due regard to the factors referred to above in subparagraph 9(a). The Company by written notice to the Dealer will give the Dealer thirty (30) days in which to review the applicable study (excluding information regarding other dealers considered confidential by the Company), to discuss such additional dealer with representatives of the Company and to give the Company written notice of objection to the proposed addition. If the Dealer fails to give such written notice by such time, he shall be deemed to have consented to the proposed addition. The Company will give consideration to any such written objection and advise the Dealer in writing of its decision before any commitment is made or negotiations conducted with any dealer prospect. If the Dealer appeals to the Dealer Policy Board within fifteen (15) days of such decision, no action will be taken by the Company until the Dealer Policy Board has rendered a decision on the matter.

**9. (d)** *Established Dealer Points.*

Nothing in this paragraph 9 shall restrict the right of the Company to appoint a dealer in VEHICLES as a replacement for a dealer in VEHICLES, or to fill an established open point for a dealer in VEHICLES, at or near a location previously approved by the Company.

*PRICES AND CHARGES*

**10.** Sales of COMPANY PRODUCTS by the Company to the Dealer hereunder will be made in accordance with the prices, charges, discounts and other terms of sale set forth in price schedules or other notices published by the Company to the Dealer from time to time in accordance with the applicable VEHICLE TERMS OF SALE BULLETIN or PARTS AND ACCESSORIES TERMS OF SALE BULLETIN. Except as otherwise specified in writing by the Company, such prices, charges, discounts and terms of sale shall be those in effect, and delivery to the Dealer shall be deemed to have been made and the order deemed to have been filled on the date of delivery to the carrier or the Dealer, whichever occurs first. The Company has the right at any time and from time to time to change or eliminate prices, charges, discounts, allowances, rebates, refunds or other terms of sale affecting COMPANY PRODUCTS by issuing a new VEHICLE or PARTS AND ACCESSORIES TERMS OF SALE BULLETIN, new price schedules or other notices. In the event the Company shall increase the DEALER PRICE for any COMPANY PRODUCT, the Dealer shall have the right to cancel, by notice to the Company within ten (10) days after receipt by the Dealer of notice of such increase, any orders for such product placed by the Dealer with the Company prior to receipt by the Dealer of notice of such increase and unfilled at the time of receipt by the Company of such notice of cancellation.

*TERMS AND TITLE*

**11. (a)** *Payment.* Payment by the Dealer for each COMPANY PRODUCT shall be in accordance with the terms and conditions set forth in the applicable VEHICLE or PARTS AND ACCESSORIES TERMS OF SALE BULLETIN.

**11. (b)** *Title.* Title to each COMPANY PRODUCT purchased by the Dealer shall (unless otherwise provided in the applicable VEHICLE or PARTS AND ACCESSORIES TERMS OF SALE BULLETIN) pass to the Dealer, or to such financing institution or other party as may have been designated to the Company by the Dealer, upon delivery thereof to the carrier or to the

## *11. TERMS AND TITLE (Continued)*

Dealer, whichever occurs first, but the Company shall retain a security interest in and right to repossess any product until paid therefor.

**11.** (c) *Risk of Loss and Claims.* The Company shall assume all risk of loss or damage to any VEHICLE purchased by the Dealer from the Company which is not borne by the carrier while the VEHICLE is in the possession of the carrier provided the Dealer properly inspects and records any loss or damage of the VEHICLE upon receipt thereof. The Dealer shall cooperate with the Company in processing all claims for loss or damage of the VEHICLE in accordance with the Company's then current procedures.

**11.** (d) *Demurrage and Diversion Liability.* The Dealer shall be responsible for and pay any and all demurrage, storage and other charges accruing after arrival of any shipment at its destination. In the event the Dealer shall fail or refuse for any reason (other than labor difficulty in the Dealer's place of business or any cause beyond the Dealer's control or without the Dealer's fault or negligence) to accept delivery of any COMPANY PRODUCT ordered by the Dealer, the Dealer shall also pay the Company the amount of all expenses incurred by the Company in shipping such product to the Dealer and in returning such product to the original shipping point or diverting it to another destination; but in no event shall the Dealer pay the Company more for any such diversion than the expense of returning the product to its original shipping point.

**11.** (e) *State and Local Taxes.* The Dealer hereby represents and warrants that all COMPANY PRODUCTS purchased from the Company are purchased for resale in the ordinary course of the Dealer's business. The Dealer further represents and warrants that the Dealer has complied with all requirements for his collection and/or payment of applicable sales, use and like taxes, and has furnished or will furnish evidence thereof to the Company. These representations and warranties shall be deemed a part of each order given by the Dealer to the Company.

The Dealer agrees that, as to any COMPANY PRODUCT put to a taxable use by the Dealer, or in fact purchased by the Dealer other than for resale, the Dealer shall make timely and proper return and payment of all applicable sales, use and like taxes, and shall hold the Company harmless from all claims and demands therefor.

## *RECORDS, INSPECTIONS AND TESTS*

**12.** (a) *Record Retention.* The Dealer shall retain for at least two (2) years all records and documents, including journals and ledgers, which relate in any way, in whole or in part, to DEALERSHIP OPERATIONS, except for records used as a basis for submission of warranty and policy claims, which shall be retained for at least one (1) year.

**12.** (b) *Inspections and Tests.* The Dealer shall allow persons designated by the Company, at reasonable times and intervals and during normal business hours, to examine the DEALERSHIP FACILITIES and OPERATIONS, the Dealer's stocks of COMPANY PRODUCTS and used vehicles and vehicles at the DEALERSHIP FACILITIES for service or repair, to test the Dealer's equipment, to check and instruct the Dealer and his employees in the proper handling of warranty and other repairs and claims based thereon, and to examine, copy and audit any and all of the Dealer's records and documents. The Company may charge back to the Dealer all payments or credits made by the Company to the Dealer pursuant to such claims or otherwise which were improperly claimed or paid.

## *CHANGES IN COMPANY PRODUCTS*

**13.** The Company may change the design of any COMPANY PRODUCT, or add any new or different COMPANY PRODUCT or line, series or body style of VEHICLES, at any time and from

## *CHANGES IN COMPANY PRODUCTS (Continued)*

time to time, without notice or obligation to the Dealer, including any obligation with respect to any COMPANY PRODUCT theretofore ordered or purchased by or delivered to the Dealer. Such changes shall not be considered model year changes as contemplated by the provisions of any VEHICLE TERMS OF SALE BULLETIN. The Company may discontinue any VEHICLE or other COMPANY PRODUCT at any time without liability to the Dealer.

## *DEALER NOT AGENT OF THE COMPANY*

**14.** This agreement does not in any way create the relationship of principal and agent between the Company and the Dealer and under no circumstances shall the Dealer be considered to be an agent of the Company. The Dealer shall not act or attempt to act, or represent himself, directly or by implication, as agent of the Company or in any manner assume or create any obligation on behalf of or in the name of the Company.

## *TRADEMARKS AND TRADE NAMES*

**15. (a)** ***Use in Firm Name.*** The Dealer may not use any trademark or trade name used or claimed by the Company or Ford Motor Company or any of its subsidiaries in the Dealer's firm name or trade name except with the Company's prior written approval. If, after such approval, the Company should at any time so request, the Dealer shall promptly discontinue such use and take all steps necessary or appropriate in the opinion of the Company to eliminate such trademark or trade name from the Dealer's firm name or trade name.

**15. (b)** ***Limitations on Use.*** The Dealer shall not use any trademark or trade name used or claimed by the Company or Ford Motor Company or any of its subsidiaries, or coined words or combinations containing the same or parts thereof, in connection with any business conducted by the Dealer other than in dealing in COMPANY PRODUCTS to which such trademark or trade name refers, and then only in the manner and form approved by the Company; provided that the word "Ford" may be used in connection with a business operated by or affiliated with the Dealer as the Dealer's used vehicle outlet if the Dealer obtains the Company's prior written approval, which may be revoked at any time, and if the Dealer retains the right to require any such affiliated business to discontinue such use at any time the Dealer may direct. The Dealer shall direct such discontinuance on request of the Company at any time.

The Dealer shall not contest the right of the Company to exclusive use of any trademark or trade name used or claimed by the Company or Ford Motor Company or any of its subsidiaries.

## *REPORTS TO FORD MOTOR COMPANY'S DEALER POLICY BOARD*

**16.** In the interest of maintaining harmonious relationships between the parties to this agreement, the Dealer shall report promptly in writing to Ford Motor Company's Dealer Policy Board (hereafter called "Policy Board") any act or failure to act on the part of the Company or any of its representatives which the Dealer believes was not in accordance with this agreement or was not reasonable, fair, for good cause or provocation or in good faith as to the Dealer. For the purposes of this agreement, the term "good faith" shall mean the Company and its representatives acting in a fair and equitable manner toward the Dealer so as to guarantee the Dealer freedom from coercion or intimidation from the Company. It is the purpose of the Policy Board to receive, carefully evaluate and, to the extent possible, resolve any such claim to the mutual satisfaction of the parties. Any decision of the Policy Board shall be binding on the Company but shall not be binding on the Dealer.

## *TERMINATION OR NONRENEWAL OF AGREEMENT*

**17.** (a) ***By Dealer.*** The Dealer may terminate or not renew this agreement at any time at will by giving the Company at least thirty (30) days prior written notice thereof.

**17.** (b) ***By Company Due to Events Controlled by Dealer.*** The following represent events which are substantially within the control of the Dealer and over which the Company has no control, and which are so contrary to the intent and purpose of this agreement as to warrant its termination or nonrenewal:

(1) Any transfer or attempted transfer by the Dealer of any interest in, or right, privilege or obligation under this agreement; or transfer by operation of law or otherwise, of the principal assets of the Dealer that are required for the conduct of DEALERSHIP OPERATIONS; or any change, however accomplished, without the Company's prior written consent, which consent shall not be unreasonably withheld, in the direct or indirect ownership or operating management of the Dealer as set forth in paragraph F.

(2) Any misrepresentation in applying for this agreement by the Dealer or any person named in paragraph F; or submission by the Dealer to the Company of any false or fraudulent application or claim, or statement in support thereof, for warranty, policy or campaign adjustments, for wholesale parts or VEHICLE sales incentives or for any other refund, credit, rebate, incentive, allowance, discount, reimbursement or payment under any Company program; or acceptance by the Dealer of any payment for any work not performed by the Dealer in accordance with the provisions of this agreement, the Warranty Manual or any applicable CUSTOMER SERVICE BULLETIN.

(3) Insolvency of the Dealer, inability of the Dealer to meet debts as they mature, filing by the Dealer of a voluntary petition under any bankruptcy or receivership law, adjudication of the Dealer as a bankrupt or insolvent pursuant to an involuntary petition under any such law, appointment by a court of a temporary or permanent receiver, trustee or custodian for the Dealer or the Dealer's assets, or execution of an assignment by the Dealer for the benefit of creditors; dissolution of the Dealer; or failure of the Dealer for any reason to function in the ordinary course of business, or to maintain the DEALERSHIP OPERATIONS open for business during and for not less than the hours customary in the trade and lawful in the DEALER'S LOCALITY as set forth in paragraph 7.

(4) Conviction in a court of original jurisdiction of the Dealer or any person named in paragraph F for any violation of law, or any conduct by any such person unbecoming a reputable businessman, or disagreement between or among any persons named in paragraph F, which in the Company's opinion tends to affect adversely the operation or business of the Dealer or the good name, goodwill or reputation of the Dealer, other authorized dealers of the Company, the Company, or COMPANY PRODUCTS.

(5) The Dealer shall have engaged, after written warning by the Company, in any advertising or business practice contrary to the provisions of subparagraph 6(i) of this agreement.

(6) Failure of the Dealer to fulfill any provision of paragraph 10 (as to prices or charges), or paragraph 11 (as to terms and title, including payment for COMPANY PRODUCTS), or paragraph 15 (as to trademarks or trade names), or to pay the Company any sum due pursuant to any agreement, including any purchase or lease agreement, between the Company and the Dealer.

Upon occurrence of any of the foregoing events, the Company may terminate this agreement by giving the Dealer at least fifteen (15) days prior written notice thereof.

*TERMINATION OR NONRENEWAL OF AGREEMENT (Continued)*

**17. (e)** ***By Company for Nonperformance by Dealer of Sales, Service, Facilities or Other Responsibilities.*** If the Dealer shall fail to fulfill any of his responsibilities with respect to:

(1) CARS or TRUCKS under the provisions of paragraph 2 of this agreement,

(2) GENUINE PARTS under the provisions of paragraph 3 of this agreement,

(3) Service under the provisions of paragraph 4 of this agreement,

(4) DEALERSHIP LOCATION or FACILITIES under the provisions of paragraph 5 of this agreement, or

(5) Other responsibilities under the provisions of subparagraphs 6(a) through 6(h) (as to signs, personnel, residence, capital, accounting system, financial reports, delivery or sales reports or customer handling), subparagraph 6(j) (as to laws, rules or regulations), paragraph 12 (as to records, inspections and tests) or paragraph 14 (as to the Dealer not being an agent of the Company) of this agreement,

the Company shall notify the Dealer in writing of such failure or failures, will offer to review promptly with the Dealer the reasons which, in the Company's or Dealer's opinion, account for such failure or failures and will provide the Dealer with a reasonable opportunity to cure the same. If the Dealer fails or refuses to cure the same within a reasonable time after such notice, the Company may terminate or not renew this agreement by giving the Dealer at least ninety (90) days prior written notice thereof.

**17. (d)** ***By Company or Dealer Because of Death or Physical or Mental Incapacity of any Principal Owner.*** Since this agreement has been entered into by the Company in reliance upon the continued participation in the ownership of the Dealer by the persons named in subparagraph F(i) hereof, the Company or the Dealer may (subject to the provisions of paragraph 20 hereof) terminate or not renew this agreement, by giving the other at least fifteen (15) days prior written notice thereof, in the event of the death or physical or mental incapacity of any owner of the Dealer named in subparagraph F(i); provided, however, that in order to facilitate orderly termination and liquidation of the dealership, the Company shall defer for a period of three (3) months to one (1) year, as the Company may determine, the exercise of its right to terminate in such event if the executor or representative of such deceased or incapacitated owner shall so request and shall demonstrate the ability to carry out the terms and conditions of this agreement.

**17. (e)** ***By Company or Dealer for Failure of Dealer or Company to be Licensed.*** If the Company or the Dealer requires a license for the performance of any responsibility under this agreement in any jurisdiction where this agreement is to be performed and if either party shall fail to secure and maintain such license, or if such license is suspended or revoked, irrespective of the cause or reason, either party may terminate or not renew this agreement by giving the other at least fifteen (15) days prior written notice thereof.

**17. (f)** ***By Company at Will.*** If this agreement is not for a stated term specified in paragraph G of this agreement, the Company may terminate this agreement at will at any time by giving the Dealer at least one hundred and twenty (120) days prior written notice thereof.

**17. (g)** ***By Company Upon the Offer of a New Agreement.*** The Company may terminate this agreement at any time by giving the Dealer at least thirty (30) days prior written

*17. TERMINATION OR NONRENEWAL OF AGREEMENT (Continued)*

notice thereof in the event the Company offers a new or amended form of agreement to its authorized dealers in COMPANY PRODUCTS.

**17. (h)** *Acts in Good Faith.*

(1) The Dealer acknowledges that each of his responsibilities under this agreement is reasonable, proper and fundamental to the purpose of this agreement and that (i) his failure to fulfill any of them would constitute a material breach of this agreement, (ii) the occurrence of any of the events set forth in subparagraph 17(b), 17(c), or 17(e) would seriously impair fundamental considerations upon which this agreement is based, and (iii) the rights of termination or nonrenewal reserved in the events specified in subparagraph 17(g) are necessary to permit the Company to remain competitive at all times. The Dealer acknowledges that any such failure, occurrence or event constitutes a reasonable, fair, good, due and just cause and provocation for termination or nonrenewal of this agreement by the Company.

(2) The Dealer agrees that if the Company or any of its representatives (i) requests the Dealer to fulfill any of such responsibilities, (ii) believes that any such failure, occurrence or event is occurring or has occurred and advises the Dealer that, unless remedied, such failure, occurrence or event may result in Company termination or nonrenewal of this agreement, (iii) gives the Dealer notice of termination or nonrenewal, or terminates or fails to renew this agreement, because of any such failure, occurrence or event, then such request, advice, notice, termination or nonrenewal shall not be considered to constitute or be evidence of coercion or intimidation, or threat thereof, or to be unreasonable, unfair, undue or unjust, or to be not in good faith.

## *REQUIRED APPEAL TO POLICY BOARD—TERMINATIONS OR NONRENEWALS—OPTIONAL ARBITRATION PLAN*

**18. (a)** *Arbitration Plan.* The Company has adopted the Ford Marketing Corporation Plan and Rules of Arbitration ("Arbitration Plan") effective June 1, 1972, a copy of which was delivered to the Dealer with this agreement. The Company reserves the right to terminate, change or modify the Arbitration Plan at any time upon notice to the Dealer. Any arbitration pursuant to the Arbitration Plan shall be governed by the terms of the Arbitration Plan in effect on the date such arbitration is commenced.

**18. (b)** *Appeal to Policy Board.* Any protest, controversy or claim by the Dealer (whether for damages, stay of action or otherwise) with respect to any termination or nonrenewal of this agreement by the Company or the settlement of the accounts of the Dealer with the Company after any termination or nonrenewal of this agreement by the Company or the Dealer has become effective, shall be appealed by the Dealer to the Policy Board within fifteen (15) days after the Dealer's receipt of notice of termination or nonrenewal, or, as to settlement of accounts after termination or nonrenewal, within one year after the termination or nonrenewal has become effective. Appeal to the Policy Board shall be a condition precedent to the Dealer's right to pursue any other remedy available under this agreement or otherwise available under law. The Company, but not the Dealer, shall be bound by the decision of the Policy Board.

**18. (c)** *Optional Arbitration.* If the Dealer is dissatisfied with the decision of the Policy Board in a case referred to in subparagraph 18(b), the Dealer may, at his option, elect to arbitrate

*18. REQUIRED APPEAL TO POLICY BOARD—TERMINATIONS OR NONRENEWALS—OPTIONAL ARBITRATION PLAN (Continued)*

in accordance with the Arbitration Plan or elect not to arbitrate and retain the right to pursue whatever other remedies may be available, provided that:

(1) The Dealer's election to arbitrate shall be made by filing an Arbitration Demand with the Secretary appointed under the Arbitration Plan within thirty (30) days after receipt by the Dealer of a decision by the Policy Board. The Arbitration Demand shall set forth a clear and complete statement of the nature of the Dealer's claim and the basis thereof, the amount involved, if any, and the remedy sought. The Arbitration Demand shall be in writing and shall be given by personal delivery or sent by registered or certified mail, postage prepaid, to the Secretary, Arbitration Panel, Ford Marketing Corporation, The American Road, Dearborn, Michigan 48121.

(2) If the Dealer, by filing a timely Arbitration Demand, elects to arbitrate, arbitration shall be the sole and exclusive remedy of the Dealer in such cases, and the decision and award of the Arbitration Panel provided for in the Arbitration Plan shall be final and binding on both parties.

(3) If the Dealer elects to arbitrate, either party may enjoin the other from pursuing any other remedy in such cases, except that either party may sue to enforce any order or award of the Arbitration Panel and judgment upon such order or award may be entered by any court having jurisdiction.

**18.** (d) ***Limitation of Actions.*** If the Dealer elects not to arbitrate by failing to file a timely Arbitration Demand, all causes of action at law or in equity and all rights and remedies before federal, state, or local administrative agencies, departments or boards shall be forever barred unless commenced or instituted within one year after the date of the decision of the Policy Board.

**18.** (e) ***Expenses of Arbitration.*** During the first quarter of each calendar year, the Company and the Chairmen of the Ford and Lincoln-Mercury National Dealer Councils ("Dealer Council Chairmen") shall jointly establish a budget for that calendar year for the retainer fees, daily fees, clerical costs, travel expenses and living allowances ("Compensation") of the Arbitrator selected by the Dealer Council Chairmen, for one-half of the Compensation of the Arbitrator selected as Chairman of the Arbitration Panel, and for one-half of the cost of outside services employed by the Arbitration Panel, pursuant to the Arbitration Plan.

(1) The amount of such budget shall be advanced by the Company to a Trustee selected by the Company and the Dealer Council Chairmen. The Trustee shall pay the Compensation of the Arbitrator selected by the Dealer Council Chairmen, one-half of the Compensation of the Chairman of the Arbitration Panel, and one-half of the cost of outside services employed by the Arbitration Panel, as statements are rendered therefor, from and to the extent of such advance. All other costs of the Arbitration Panel for that calendar year shall be borne by the Company except as hereinafter provided. Any unexpended portion of such budget shall be carried forward to the next calendar year.

(2) The amount of such budget shall be spread in equal amounts among all dealerships then having valid and outstanding Ford, Mercury or Lincoln Sales and Service Agreements with the Company ("Authorized Dealers"). Such equal amount shall be charged to each Authorized Dealer. The Dealer shall promptly pay the amount so charged.

*18. REQUIRED APPEAL TO POLICY BOARD--TERMINATIONS OR NONRENEWALS--OPTIONAL ARBITRATION PLAN (Continued)*

(3) Each party shall pay and bear all costs of any witness called or other evidence adduced by that party, of any attorney, accountant or other person retained by that party and of any transcript ordered by that party in connection with any arbitration under the Arbitration Plan.

(4) The Arbitration Panel, as a part of any award, may assess, against any party or parties to an arbitration under the Arbitration Plan, all or any part of the costs of any witness called, any other evidence adduced, or any outside service employed, at the direct request of any Arbitrator.

*OBLIGATIONS UPON TERMINATION OR NONRENEWAL*

**19.** Upon termination or nonrenewal of this agreement by either party, the Dealer shall cease to be an authorized Ford dealer; and:

**19.** (a) *Sums Owing the Company.* The Dealer shall pay to the Company all sums owing to the Company by the Dealer.

**19.** (b) *Discontinuance of Use of Trademarks and Trade Names.* The Dealer shall at his own expense (1) remove all signs erected or used by the Dealer, or by any business associated or affiliated with the Dealer, and bearing the name "Ford" or any other trademark or trade name used or claimed by the Company or Ford Motor Company or any of its subsidiaries (except signs owned by the Company and except as such use may be permitted under other agreements relating to products of the Company other than COMPANY PRODUCTS) or any word indicating that the Dealer is an authorized dealer with respect to any COMPANY PRODUCT, (2) erase or obliterate all such trademarks, trade names and words from stationery, forms and other papers used by the Dealer, or any business affiliated with the Dealer, (3) discontinue all advertising of the Dealer as an authorized dealer in COMPANY PRODUCTS, (4) discontinue any use of any such trademark, trade name or word in the Dealer's firm or trade name and take all steps necessary or appropriate in the opinion of the Company to change such firm or trade name to eliminate any such trademark, trade name or word therefrom, and (5) refrain from doing anything whether or not specified above that would indicate that the Dealer is or was an authorized Dealer in COMPANY PRODUCTS.

If the Dealer fails to comply with any of the requirements of this subparagraph 19(b), the Dealer shall reimburse the Company for all costs and expenses, including reasonable attorney's fees, incurred by the Company in effecting or enforcing compliance.

**19.** (c) *Warranty Work.* The Dealer shall cease to be eligible to receive reimbursement from the Company with respect to any work thereafter performed or part thereafter supplied under any warranty or policy applicable to any COMPANY PRODUCT, unless specifically authorized by the Company in writing to perform such work and then only in the manner and for the period of time set forth in such authorization.

**19.** (d) *Service Records.* The Dealer shall deliver to the Company or its nominee all of the Dealer's records with respect to predelivery, warranty, policy, campaign and other service work of the Dealer.

**19.** (e) *Orders and Customer Deposits.* The Dealer shall assign to the Company or its nominee all customer orders for COMPANY PRODUCTS which the Dealer has not filled and

*19. OBLIGATIONS UPON TERMINATION OR NONRENEWAL (Cont.)*

which the Company is not obligated by subparagraph 19(f) to supply to the Dealer, and all customer deposits made thereon; and deliver to the Company or its nominee the names and addresses of the Dealer's existing and prospective customers for COMPANY PRODUCTS.

**19. (f)** ***Deliveries After Termination or Nonrenewal.*** If this agreement shall be terminated or not renewed by the Company (1) because of the death or physical or mental incapacity of any principal owner of Dealer pursuant to subparagraph 17(d) hereof, or (2) at will pursuant to subparagraph 17(f) hereof, the Company shall use its best efforts to fill the Dealer's bona fide orders for COMPANY PRODUCTS outstanding on the effective date of termination or nonrenewal. The Company's fulfillment of such orders for VEHICLES, however, may be limited to the number and type of VEHICLES delivered to the Dealer by the COMPANY during the ninety (90) days immediately preceding such date, or the number and type of bona fide retail orders for VEHICLES accepted by the Dealer and unfilled on such date, whichever is smaller. Deliveries under this subparagraph shall be made in substantial accord with the Company's normal delivery schedules for the area, unless the Company elects to make all such deliveries within thirty (30) days after the effective date of termination. The Dealer shall inspect, condition and repair such VEHICLES in the manner specified in this agreement and in accordance with procedures outlined by the Company from time to time.

Except for deliveries required by this subparagraph 19(f), each order for a COMPANY PRODUCT received by the Company from the Dealer and unfilled on the effective date of termination or expiration of this agreement shall be deemed cancelled.

*SUCCESSOR TO THE DEALER IN THE EVENT OF DEATH OR INCAPACITY*

**20.** In the event of termination or nonrenewal of this agreement by the Company pursuant to subparagraph 17(d) because of the death or physical or mental incapacity of a principal owner of the Dealer named in subparagraph F(i) hereof:

**20. (a)** ***Interim Agreement.*** The Company, subject to the other provisions of this paragraph, shall offer an Interim Ford Sales and Service Agreement for COMPANY PRODUCTS:

**(1)** To a successor dealership composed of the last person nominated by such principal owner as his successor, together with any other principal and remaining owners named in subparagraphs F(i) and F(iii) (hereafter called "Other Owners") hereof, provided that:

**(i)** The nomination had been submitted to the Company in writing on the form supplied by the Company with the consent of the Other Owners prior to such death or the occurrence of such incapacity, and

**(ii)** The Company, upon receipt of the nomination had accepted the nominee as then being qualified (or as capable of becoming qualified in five (5) years), and at the time the notice of termination or nonrenewal is given approves the nominee as then being qualified, to assume full managerial authority for the DEALERSHIP OPERATIONS, which acceptance or approval shall not be unreasonably withheld, and

**(iii)** The nominee has been named as a manager of, and has been actively participating in the general management of, the Dealer or a satisfactorily performing automotive or comparable retail business for a reasonable period of time prior to the time of the notice of termination or nonrenewal, and

*20. SUCCESSOR TO THE DEALER IN THE EVENT OF DEATH OR INCAPACITY (Continued)*

(iv) The successor dealership, at the time the Interim Agreement is to be offered, has capital and facilities substantially in accordance with Company GUIDES therefor, and

(v) In the event more than one nominee fulfills the above conditions, the Company, in its discretion, shall determine which nominee or nominees, together with the Other Owners, shall compose the successor dealership to which such Interim Agreement shall be offered;

(2) To a successor dealership, in the event that such principal owner has notified the Company in writing that the spouse or another relative or heir of such principal owner shall retain or acquire a financial interest in the successor dealership and the Company has approved such spouse, relative or heir for such financial interest which approval shall not be unreasonably withheld. Such successor dealership shall be composed of such spouse, relative or heir, together with the Other Owners and any nominee or nominees approved and qualified pursuant to subparagraph 20(a) (1) hereof, provided that:

(i) The Other Owners and any nominees and such spouse, relative or heir agree in writing how each of them shall participate in the ownership and management of the successor dealership, and

(ii) Managerial authority and responsibility of the successor dealership shall be vested in a nominee approved and qualified pursuant to subparagraph 20(a) (1) hereof, or in a person or persons who have been named in subparagraph F (ii) of this agreement and have been actually participating in the general management of the Dealer for a reasonable period of time prior to the notice of termination or nonrenewal or in another person or persons qualified to assume managerial authority and responsibility and approved by the Company to be so named, which approval shall not be unreasonably withheld, and

(iii) The successor dealership, at the time the Interim Agreement is to be offered, has capital and facilities substantially in accordance with Company GUIDES therefor;

(3) To a successor dealership, in the event that the deceased or incapacitated principal owner has neither nominated a successor pursuant to subparagraph 20(a) (1) hereof, nor notified the Company of a retained or acquired financial interest pursuant to subparagraph 20(a) (2) hereof, which successor dealership shall be composed of the Other Owners; provided that the Other Owners agree in writing how each of them shall participate in the owner-ship and management of the successor dealer-ship and the successor dealership fulfills the conditions set forth in subparagraphs 20(a) (2)(ii) and (iii) of this agreement.

20. (b) *Buy-Out.* The succes-sor dealer-ship named in such Interim Agreement shall arrange in writing, subject to the approval of the Company which shall not be unreasonably withheld, for one or more persons named in subparagraph F(ii) of the Interim Agreement to have the right to acquire during its term at least a 20% ownership interest in the successor dealership and, if the successor dealership is offered a standard Sales and Service Agreement for

*20. SUCCESSOR TO THE DEALER IN THE EVENT OF DEATH OR INCAPACITY (Continued)*

COMPANY PRODUCTS at the expiration of the Interim Agreement, to have the right to acquire additional ownership interests therein during the first five (5) years of such standard agreement and, at the end of such five (5) years, to acquire the entire ownership interest therein.

**20.** (c) *Term Continuation.* Any Interim Agreement offered pursuant to this paragraph 20 shall be in the form in effect between the Company and its authorized dealers in COMPANY PRODUCTS at the time of such offer, and the term of such Interim Agreement shall be for twenty-four (24) months, or such longer term as the Company shall determine to be reasonable to permit the person or persons named in subparagraph F(ii) thereof to acquire a 20% ownership interest in the successor dealership pursuant to subparagraph 20(b) of this agreement, subject to termination during such term as provided in such Interim Agreement. At least ninety (90) days prior to the end of the term of such Interim Agreement, the Company shall determine whether or not the person or persons composing the successor dealership with which such Interim Agreement shall have been executed possess the qualifications with respect to management, capital and facilities necessary to fulfill the responsibilities of an authorized dealer in COMPANY PRODUCTS and, if the Company shall determine that they do possess the same, which determination shall not be unreasonably made, the Company shall offer to such successor dealership, upon the expiration of the term of the Interim Agreement, a standard Sales and Service Agreement for COMPANY PRODUCTS in the form then in effect.

**20.** (d) *Limitation of Offer.* Notwithstanding anything stated or implied to the contrary in this paragraph 20, the Company shall not be obligated to offer an Interim Agreement to any successor dealership if the Company has notified the Dealer in writing prior to such death or physical or mental incapacity that the Company's market representation plans do not provide for continuation of representation from the DEALERSHIP FACILITIES as determined by the Company under paragraph 9 of this agreement. If such market representation plans provide for the relocation of the Dealer to another location, however, the Company shall offer an Interim Agreement subject to the condition that the successor dealership relocate within a reasonable time to such other location in facilities approved by the Company.

**20.** (e) *Limitation for Acceptance.* In the event that the person or persons composing a proposed successor dealership to which any offer of an Interim Agreement or Standard Sales and Service Agreement for COMPANY PRODUCTS shall have been made pursuant to this paragraph 20 shall not accept the same within thirty (30) days after notification to them of such offer, such offer shall automatically expire.

*REACQUISITION OF COMPANY PRODUCTS AND ACQUISITION OF THE DEALER'S SIGNS, SPECIAL TOOLS AND EQUIPMENT, AND MAINTENANCE ITEMS*

**21.** Upon termination or nonrenewal of this agreement by the Company, the Dealer may elect as provided in paragraph 23 or, upon termination or nonrenewal of this agreement by the Dealer, the Dealer may demand in his notice of termination or nonrenewal, to have the Company purchase or accept upon return from the Dealer, in return for his general release specified in paragraph 23:

**21.** (a) *Vehicles.* Each unused, undamaged and unsold VEHICLE (together with all factory-installed options thereon) in the Dealer's stock on the effective date of such termination or

## 21. *REACQUISITION OF COMPANY PRODUCTS AND ACQUISITION OF THE DEALER'S SIGNS, SPECIAL TOOLS AND EQUIPMENT, AND MAINTENANCE ITEMS (Continued)*

nonrenewal, provided such VEHICLE is in first-class salable condition, is of a then current model, has not been altered outside Ford Motor Company's factory, and was purchased by the Dealer from the Company or another authorized dealer in VEHICLES prior to giving or receiving notice of such termination or nonrenewal. The price for such VEHICLE shall be its DEALER PRICE, plus the Company's charges for distribution, delivery and taxes, at the time it was purchased from the Company, less all allowances paid or applicable allowances offered thereon by the Company.

**21.** (b) *Genuine Parts.* Each unused, undamaged and unsold GENUINE PART, and each unopened item of appearance and maintenance materials and paints (hereinafter called "maintenance items") in the Dealer's stock on the effective date of such termination or nonrenewal, provided such GENUINE PART or maintenance item is offered for sale by the Company to authorized dealers in VEHICLES in the Company's then current Parts and Accessories Price Schedules, is in first-class salable condition including reasonably legible and usable packaging and was purchased by the Dealer from the Company or another Company authorized dealer in normal volume prior to giving or receiving notice of such termination or nonrenewal. Notwithstanding the foregoing, the repurchase of such GENUINE PARTS identified by the Company as accessories shall be limited to those so purchased by the Dealer within twelve (12) months preceding such date, or those sold to the Dealer by the Company for use in a VEHICLE that is a current model on such effective date. The price for each such GENUINE PART or maintenance item shall be its DEALER PRICE in effect on the effective date of termination or nonrenewal, less all allowances paid or applicable allowances offered thereon by the Company. The Dealer, at his own expense, shall carefully pack and box such of the eligible GENUINE PARTS and maintenance items as the Company may direct, and the Company shall pay the Dealer an additional five percent (5%) of the DEALER PRICE of the eligible GENUINE PARTS and maintenance items so packaged and boxed.

**21.** (c) *Dealer's Signs.* Each sign at DEALERSHIP LOCATION which bears a trademark or trade name used or claimed by the Company or Ford Motor Company or any of its subsidiaries, is owned by the Dealer on the effective date of termination or nonrenewal, was approved by the Company pursuant to subparagraph 6(a) and, if requested by the Company, is removed by the Dealer at his expense. The price for each such sign shall be its fair market value on such effective date as agreed by the Company and the Dealer, or, if they cannot agree, as determined by a qualified independent appraiser selected by the Company and the Dealer.

**21.** (d) *Special Tools and Equipment.* All special tools and automotive service equipment owned by the Dealer on the effective date of termination or nonrenewal which were designed especially for servicing VEHICLES, which are of the type recommended in writing by the Company and designated as "special" tools and equipment in the applicable CUSTOMER SERVICE BULLETIN or other notice pertaining thereto sent to the Dealer by the Company, which are in usable and good condition except for reasonable wear and tear, and which were purchased by the Dealer within the three (3) year period preceding the effective date of termination or nonrenewal. The price for each special tool and item of automotive service equipment shall be its fair market value on such effective date as agreed by the Company and the Dealer, or, if they cannot agree, as determined by a qualified independent appraiser selected by the Company and the Dealer.

## *21. REACQUISITION OF COMPANY PRODUCTS AND ACQUISITION OF THE DEALER'S SIGNS, SPECIAL TOOLS AND EQUIPMENT, AND MAINTENANCE ITEMS (Continued)*

**21.** (e) *Procedures, Delivery and Title.* The Dealer shall return all property to be purchased or acquired by the Company pursuant to this paragraph 21 in accordance with the procedures and timetables then established by the Company, shall deliver such property at the DEALERSHIP FACILITIES unless the Company directs otherwise (in which event the Company shall pay transportation costs to the place of delivery), shall and hereby does warrant good clear title to all such property, and shall furnish to the Company evidence satisfactory to the Company that the Dealer has complied with all applicable bulk sales laws and that such property is free and clear of all claims, liens and encumbrances.

**21.** (f) *Payment.* The Company shall pay the Dealer for the property purchased or acquired by it pursuant to this paragraph 21 within a reasonable time following the Dealer's fulfillment of all of the Dealer's obligations under paragraph 19 and this paragraph 21 subject to the Dealer's tender of a general release as specified in paragraph 23, and further subject to offset of any obligations owing by the Dealer to the Company. If the Company has not paid the Dealer the net amount due the Dealer for such property within a period of two (2) months after the Dealer has fulfilled his obligations under this paragraph 21 and provided the Dealer has fully complied with paragraphs 19 and 23, the Company will, at the Dealer's request, advance the Dealer seventy-five percent (75%) of the estimated amount due the Dealer net of any monies owed to the Company by the Dealer. The Company will pay the balance of such amount as soon as practical thereafter.

**21.** (g) *Assignment of Benefits.* As an assist to the Dealer in effecting an orderly transfer of his assets to a replacement dealer and to minimize possible interruptions in customer convenience and service, in the event of termination or nonrenewal by either party, any rights or benefits with respect to subparagraphs 21(a), 21(b), 21(c) and 21(d), herein may be assigned by the Dealer to anyone to whom the Dealer has agreed to sell the respective property and whom the Company has approved as a replacement for the Dealer. Such assignments will be subject to Dealer's fulfillment of his obligations under paragraph 19 and this paragraph 21 and subject to the Dealer's tender of a general release as specified in paragraph 23.

## *DEALERSHIP FACILITIES ASSISTANCE UPON NONRENEWAL OR CERTAIN TERMINATIONS BY THE COMPANY*

**22.** (a) *Dealer Eligibility.* The Dealer may elect, as provided in paragraph 23, to have the Company assist the Dealer with respect to the Dealer's Eligible Facilities (as herein defined), in return for the Dealer's general release as specified in paragraph 23, upon nonrenewal of this agreement by the Company, or upon termination of this agreement by the Company, for the following reasons:

**(1)** Because of disagreement among persons named in paragraph F pursuant to subparagraph 17(b) (4) or because of the Dealer's failure with respect to prices or charges, terms or title or trademarks or trade names, or other sums due the Company pursuant to subparagraph 17(b) (6);

**(2)** Because of the Dealer's nonperformance of his responsibilities set forth in paragraphs 2, 3, 4 or 6 pursuant to subparagraph 17(c);

## 22. *DEALERSHIP FACILITIES ASSISTANCE UPON NONRENEWAL OR CERTAIN TERMINATIONS BY THE COMPANY (Continued)*

(3) Because of the death or physical or mental incapacity of a principal owner named in subparagraph F(1) pursuant to subparagraph 17(d) providing that a successor dealership is not appointed as provided under paragraph 20;

(4) Because of failure of the Dealer or the Company to be licensed pursuant to subparagraph 17(e); or

(5) At will pursuant to subparagraph 17(f) if this agreement is not for a stated term specified in paragraph G of this agreement.

22. (b) *Eligible Facilities.* "Eligible Facilities" are hereby defined as only those DEALERSHIP FACILITIES which are listed in the Dealership Facilities Supplement in effect at the time of such nonrenewal or termination, are approved by the Company pursuant to paragraph 5, are owned or leased by the Dealer and are being used by the Dealer solely for fulfilling his responsibilities under this agreement (or under this agreement and one or more other vehicle sales agreements with the Company which are not renewed or are terminated by the Company at the same time as this agreement) at the time the Dealer received notice of such nonrenewal or termination.

22. (c) *Company's Obligation.* Subject to the provisions of subparagraph 22(d) hereof, if neither the Dealer nor the Company can arrange with a third party within ninety (90) days after the effective date of such termination or nonrenewal:

(1) In the case of Eligible Facilities which are owned by the Dealer, either a lease for one year commencing within such ninety (90) days at fair rental value or a sale within such ninety (90) days at fair market value; or

(2) In the case of Eligible Facilities which are leased by the Dealer, either an assignment of lease, or a sublease for one year (or for the balance of the term of the Dealer's lease if that is shorter) commencing within such ninety (90) days at the Dealer's rental rate (or, if the facilities are owned by an affiliate of the Dealer at fair rental value, if that is different);

the Company shall offer either to make monthly payments to the Dealer, commencing with the ninety-first day, pursuant to subparagraph 22(e) hereof, or to make a lump sum payment to the Dealer pursuant to said subparagraph 22(e), or to accept for itself on the ninety-first day such a lease or sale from the Dealer-owner or such an assignment or sublease from the Dealer-lessee.

For the purpose of this subparagraph 22(c), fair market or fair rental value shall mean value based on the use of the facilities in the conduct of DEALERSHIP OPERATIONS. In the event the Dealer and the Company are unable to agree on the fair market or rental value of any Eligible Facilities, such value shall be determined by an independent real estate appraiser selected by the Dealer and the Company.

22. (d) *Limitations on Company's Obligation.* The Company's obligation with respect to any Eligible Facilities shall be limited to those expressly set forth in this paragraph 22. The Company shall be released from all obligations with respect to any Eligible Facilities if (1) the Dealer fails to give the Company, within thirty (30) days after the Company shall have sent him a tender of benefits as provided in paragraph 23, a written request for assistance pursuant to this paragraph 22, accompanied by a written representation by the Dealer that the Dealer

## 22. *DEALERSHIP FACILITIES ASSISTANCE UPON NONRENEWAL OR CERTAIN TERMINATIONS BY THE COMPANY (Continued)*

and each owner named in subparagraph F(1) is, for a period of at least one (1) year, retiring from the business of selling new and used passenger cars and trucks in the general area of the DEALER'S LOCALITY, (2) the Dealer fails to make diligent efforts to obtain from third parties an offer to purchase, lease, sublease or take an assignment of lease described in subparagraph 22(c), or refuses, or within a reasonable time fails to accept, such an offer from a third party; (3) the Dealer does not accept any offer with respect to Eligible Facilities made by the Company in accordance with subparagraph 22(c) within thirty (30) days after receiving it, (4) the Dealer or anyone else occupies such facilities for any purpose for a period of more than ninety (90) days following the effective date of such termination or nonrenewal, or (5) the Company arranges a cancellation of the lease of any leased facilities without cost to the Dealer or the Dealer fails or refuses to execute an agreement covering such cancellation.

**22. (e)** ***Satisfaction of Company's Obligation.*** The Company may satisfy all of its obligations under this paragraph 22 with respect to any Eligible Facilities by paying to the Dealer (1) if the facilities are owned by the Dealer, the difference, each month for twelve months (or until facilities are sold if that is earlier), between any lesser rentals received by the Dealer for such facilities for such month and the fair rental value of such facilities for such month, or (2) if the facilities are leased by the Dealer, the difference, each month for twelve months (or until the expiration of the lease if that is earlier) between any lesser rentals received by the Dealer for such facilities for such month and the rental paid by the Dealer (or, if the facilities are owned by an affiliate of the Dealer, the fair rental value if that is different) for such facilities for such month, or (3) at the election of the Company, a lump sum equal to the total payments contemplated in items (1) or (2) of this subparagraph 22(e), or such lesser sum as may be agreed upon between the Dealer and the Company, or by paying any lease cancellation cost negotiated by the Dealer or the Company not to exceed the total of the Company's obligations under subparagraphs 22(c) and 22(e).

## *TERMINATION BENEFITS FULL COMPENSATION; GENERAL RELEASE*

**23.** In the event of termination or nonrenewal of this agreement by the Company, the Company, within thirty (30) days after the effective date thereof, shall submit to the Dealer (1) a written tender of the benefits provided for in paragraph 21 (and in paragraph 22 where applicable) and (2) a form for the Dealer to use to elect either to reject all of such benefits or to accept one or more of them as full and complete compensation for such nonrenewal or termination. The Dealer shall have thirty (30) days after receipt of such form to return the same to the Company evidencing his election. If the Dealer fails to return the form stating such election within such thirty (30) days, the Dealer shall be deemed to have elected to accept such benefits. Upon the Dealer's election to accept any of such benefits, or upon the Dealer's demand of any such benefits upon any termination or nonrenewal by the Dealer, the Company shall be released from any and all other liability to the Dealer with respect to all relationships and actions between the Dealer and the Company, however claimed to arise, except any liability that the Company may have under subparagraph 19(f) and said paragraphs 21 and 22, and except for such amounts as the Company may have agreed in writing to pay to the Dealer. Simultaneously with the receipt of any benefits so elected or demanded, the Dealer shall execute and deliver to the Company a general release with exceptions, as above described, satisfactory to the Company.

*DISPOSITION OF THE DEALER'S ASSETS*

**21.** In view of the nature, purposes and objectives of the Company's Dealer Sales and Service Agreements, and the differences in operating requirements among dealerships of differing sizes and types of markets, the Company expressly reserves the right to select the dealers with whom it will enter into such agreements so as to maintain as high quality a dealer organization as possible.

In the event this agreement is terminated or not renewed by either party or if the Dealer plans to terminate or not renew this agreement, the Company acknowledges that the Dealer has the right to negotiate for the sale of the assets of the Dealer at such price as may be agreed upon by the Dealer and the prospective purchaser. In turn, the Dealer acknowledges that the Company has the right to approve or decline to approve any prospective purchaser as to his character, automotive experience, management, capital and other qualifications for appointment as an authorized dealer in COMPANY PRODUCTS for the DEALERSHIP OPERATIONS involved. Approval by the Company of the prospective purchaser shall not, however, be unreasonably withheld. If, in the opinion of the Company, the price to be paid for such assets appears, on the basis of the average operating results of other dealers, to result in an unsatisfactory return on investment so that such prospective purchaser (1) may not remain as a dealer, or (2) may be impelled to sell COMPANY PRODUCTS at high noncompetitive prices with a probable reduction in sales volume, the Company may, without liability to the Dealer, counsel with such prospective purchaser regarding such opinions.

*NEW AGREEMENT*

**25.** The termination or nonrenewal of this agreement by the Company in connection with the offer by the Company of a new sales and service agreement for one or more COMPANY PRODUCTS to the Dealer or the Dealer's successor in interest shall not give rise to the rights and obligations provided in paragraphs 19, 21 and 22 with respect to the COMPANY PRODUCTS included in such new agreement, unless otherwise specified by the Company in writing.

*ACKNOWLEDGEMENTS*

**26.** This agreement terminates and supersedes all other agreements concerning the DEALERSHIP OPERATIONS and constitutes the entire agreement between the parties with respect to the subject matter hereof. Each party acknowledges that, except as expressly set forth herein, no representation, understanding or presumption of law or fact has been made or relied upon (1) which has induced the execution of this agreement or would in any way modify any of its provisions, or (2) with respect to the effectiveness or duration of this agreement or the sales or profit expectancy of the DEALERSHIP OPERATIONS. The Dealer further acknowledges that he has voluntarily entered into this agreement without coercion or intimidation or threats thereof from the Company, and that each of its provisions is reasonable, fair and equitable.

*NO IMPLIED WAIVERS*

**27.** Except as expressly provided in this agreement, the waiver by either party, or the failure by either party to claim a breach, of any provision of this agreement shall not constitute a waiver of any subsequent breach, or affect in any way the effectiveness, of such provision.

*RELATIONS AFTER TERMINATION NOT A RENEWAL*

**28.** In the event that, after termination or nonrenewal of this agreement, either party has any business relations with the other party with respect to any COMPANY PRODUCT, such relations shall not constitute either a renewal of this agreement or a waiver of such termination or nonrenewal, but all such relations shall be governed by terms identical with the provisions of this agreement unless the parties execute a new and different agreement.

*LIMITATION OF THE COMPANY'S LIABILITY*

**29.** This agreement contemplates that all investments by or in the Dealer shall be made, and the Dealer shall purchase and resell COMPANY PRODUCTS, in conformity with the provisions hereof, but otherwise in the discretion of the Dealer and the Dealer's owners. Except as herein specified, nothing herein contained shall impose any liability on the Company in connection with the DEALERSHIP OPERATIONS or otherwise or for any expenditure made or incurred by the Dealer in preparation for performance or in performance of the Dealer's responsibilities under this agreement.

*NOTICES*

**30.** Any notice required or permitted by this agreement, or given in connection herewith, shall be in writing and shall be given by personal delivery or by first-class or certified or registered mail, postage prepaid. Notices to the Company shall be delivered to or addressed to the District Sales Manager of the area in which the Dealer is located except notices given by the Dealer either to the Policy Board or pursuant to the Arbitration Plan. Notices to the Dealer shall be delivered to any person designated in paragraph F(ii) of this agreement or directed to the Dealer at the Dealer's principal place of business as decribed herein.

*AMENDMENT*

**31.** Notwith-standing anything in this agreement to the contrary, the Company shall have the right to amend, modify or change this agreement in case of legislation, government regulation or changes in circumstances beyond the control of the Company that might affect materially the relationship between the Company and the Dealer.

*MICHIGAN AGREEMENT*

**32.** This agreement has been signed by the Dealer and sent to the Company in Michigan for final approval and execution and has there been signed and delivered on behalf of the Company. The parties intend this agreement to be executed as a Michigan Agreement and to be construed in accordance with the laws of the State of Michigan.

*SEPARABILITY OR TERMINATION*

**33.** If any provision of this agreement is invalid or unenforceable under the law of the place where it is to be performed, the Company may elect either to terminate this agreement in its entirety, or to consider this agreement divisible as to such provision and such provision inoperative, and to continue the remainder of this agreement in full force and effect as if such provision had not been included herein.

# FORD MARKETING CORPORATION

(Hereinafter Referred to as the Company)

## PARTS AND ACCESSORIES TERMS OF SALE BULLETIN NO. PA-1

Issued Under

The Dealer's Sales and Service Agreement for COMPANY PRODUCTS

Effective as of June 1, 1972

This PARTS AND ACCESSORIES TERMS OF SALE BULLETIN is furnished the Dealer in accordance with the terms and provisions of the Dealer's Sales and Service Agreement for COMPANY PRODUCTS.

The provisions contained herein shall apply to all GENUINE PARTS invoiced to the Dealer on and after June 1, 1972, and shall remain in effect until amended or superseded by a subsequent PARTS AND ACCESSORIES TERMS OF SALE BULLETIN issued by the Company.

## PART I. TERMS OF SALE

### A. Prices

The Dealer's purchase of any GENUINE PART will be invoiced to the Dealer at the DEALER PRICE less applicable discounts and allowances described in the Company's Parts and Accessories Policy and Procedure Manual (Parts Manual), in effect at the time the order is processed.

### B. Prepaid Transportation

All normal transportation costs to the DEALERSHIP FACILITIES will be prepaid on all shipments of GENUINE PARTS regardless of the type or value of the order.

On any shipment made by other than normal means at the request of the Dealer, the Dealer will be charged the difference, if any, between the normal transportation cost and the actual cost, except as outlined in the Parts Manual.

The Company will consider making shipments to destinations other than the DEALERSHIP FACILITIES upon request. However, any additional transportation expense to the Company in excess of the normal expense that would have been incurred by making shipment to the DEALERSHIP FACILITIES will be charged to the Dealer.

### C. Terms of Payment

The account of the Dealer is due and payable, as per statement rendered, on or before the twentieth (20th) day of the month following the billing statement period. If such account is not paid when due, the Company reserves the right to make further shipments C.O.D. or cash in advance. Extended credit terms on qualified parts and accessories purchases are detailed in the Parts Manual.

### D. Orders

Stock orders for the Dealer's requirements of GENUINE PARTS shall be furnished to the Company by the Dealer on the dates and forms specified by the Company. Other orders shall be submitted by the Dealer as required.

## PART II. RETURN PLANS AND PROVISIONS

### A. General

Parts to be returned under any of the Company's Inventory Protection programs for the Dealer are limited to new, unused, undamaged GENUINE PARTS in first class salable condition, including packaging, purchased by the Dealer directly from the Company or from the predecessor of the Dealer who purchased the same directly from the Company and with respect to which Dealer can transfer a free and clear title.

### B. Parts Obsolescence Protection Plan

The Parts Obsolescence Protection Plan is offered to assist the Dealer in disposing of stocks of GENUINE PARTS, meeting the criteria of Section A, excluding accessories and equipment ("Eligible Parts"), not needed in DEALERSHIP OPERATIONS. The plan provides for periodic returns by the Dealer, for credit, subject to offset of sums owed the Company by the Dealer, of Eligible Parts offered for sale by the Company to the Dealer during the twenty-four (24) months preceding the date on which the return is made. The maximum Return Allowance for which the Dealer is eligible under the plan is equal to five (5) percent of the value (at DEALER PRICE) of all Eligible Parts purchased by the Dealer from the Company during specified periods established by the Company.

In the event of termination, resignation, or nonrenewal of the Dealer's Sales and Service Agreement for COMPANY PRODUCTS, the Dealer, or his successor dealer if the Company approves, may elect to take advantage of the unused Return Allowance available to the Dealer immediately prior to the termination, resignation or nonrenewal subject to offset of sums owed the Company by the Dealer. Returns under such unused Return Allowance, must be completed within ninety (90) days following the effective date of termination, resignation or nonrenewal.

Other specific details of the plan which govern its administration are as published in the Parts Manual.

### C. Material Returns Program

There are various other programs under which the Dealer may be eligible to return to the Company for credit GENUINE PARTS (meeting the criteria for Section A) which were shipped in error, ordered for new models by advance order, or included in sampling shipments. Return privileges related to new unsalable GENUINE PARTS are also available on orders received with missing, defective or unsatisfactory components. The Parts Manual should be consulted for details of this program and other available programs.

## PART III. WHOLESALE INCENTIVE PROGRAM

### A. Purpose

To encourage the Dealer to sell eligible GENUINE PARTS to eligible wholesale accounts, the Company has adopted a Wholesale Incentive Program.

### B. Incentives

The Program provides a discount in the form of an incentive payment on reported sales of eligible GENUINE PARTS by the Dealer to eligible wholesale accounts. The amount of incentive for each eligible GENUINE PART is listed in the "Wholesale Incentive Per Piece" column of the Company's Parts and Accessories Price Lists. Details of the Program, including definitions of eligible GENUINE PARTS, eligible wholesale accounts and instructions for submitting applications for incentive payments, are contained in the Parts Manual.

### C. Reserved Rights

The Company reserves the right to:

- Determine which GENUINE PARTS are eligible for incentive payments.
- Determine which accounts will be recognized as eligible wholesale accounts, and the amounts of incentive payments.
- Examine and audit the records of the Dealer, in support of incentive claims and payments, as outlined in the Parts Manual.

## PART IV. LIMITATIONS ON CLAIMS

In the event no other time period is specified by the Company, the Dealer shall apply to the Company in writing for any credit, incentive or payment applicable to GENUINE PARTS under the PARTS AND ACCESSORIES TERMS OF SALE BULLETIN or otherwise within twelve (12) months from the time the Dealer first becomes eligible for the same or the application shall be denied.

Ford Marketing Corporation

By

General Manager, Ford Division

(The Dealer should file this PARTS AND ACCESSORIES TERMS OF SALE BULLETIN with the Dealer's Sales and Service Agreement for COMPANY PRODUCTS.)

PX 114 Report of Examination of Wabash Ford Truck Sales, Inc. of Indianapolis, Indiana, March 25, 1969

REPORT OF EXAMINATION

WABASH FORD TRUCK SALES, INC.

INDIANAPOLIS, INDIANA

MARCH, 1969

1326

Intra Company | March 25, 1969 | Autolite-Ford Parts Division

To: Mr. M. J. Rowlands

cc: Mr. J. T. Dickson
Mr. E. T. Duffy
Mr. J. J. Nevin
Mr. R. E. Simmons
Mr. R. W. Scott
Mr. H. S. Soper
Mr. E. R. Stroh

Subject: Chargeback of Wholesale Parts Incentive Claims -
Wabash Ford Truck Sales Inc., Indianapolis, Indiana

## SUMMARY

The Ford Division Truck Retail Operations Office has recently examined the accounting records of Wabash Ford Truck Sales, Inc., Indianapolis, Indiana, a company-financed truck dealership in the Cincinnati District. The examination disclosed that the dealership has engaged in fictitious parts transactions for the purpose of claiming wholesale incentives. Total incentives disallowed amount to $10,969.03.

## DETAILED COMMENTS

The examination was conducted by Mr. Robert Kay of the Truck Retail Operations Office during the week ending February 14, 1969.

### Purchases

The dealership has been purchasing Autolite branded parts from the E. J. Marvin Company and Green Sales Company, both of Cincinnati. Green Sales is a recognized Autolite wholesaler, while E. J. Marvin Company is considered to be an "expediter" and is not recorded.

The auditor concluded that invoices from Marvin and Green to Wabash did not represent actual transfers of merchandise, but were merely "paper" transactions. Such transactions were not posted to the dealer's perpetual inventory records, an indication that merchandise had not actually been received.

Incentives Claimed

Wabash prepared invoices to Green Sales and to the Alison Company, which is located at the same address as the E. J. Marvin Company, for incentive bearing Autolite parts and claimed incentives on the sales. Truck application parts numbers were used rather than the same parts numbers which had been "purchased" so that the invoices would list the type of parts usually wholesaled by Wabash.

Approximately 65 such invoices were prepared, beginning in April 1968 and continuing to mid-February 1969, when the examination was performed. The majority of the invoices were referenced to freight bills; however, such shipping documents were obtained by shipping a carton back and forth between Wabash and the suppliers, unopened, numerous times.

As was the case with the purchases, the sales by Wabash were not posted to the perpetual inventory records.

The auditor confronted Wabash's Parts Manager with his findings and the Parts Manager admitted that the dealership was merely "trading dollars" with the supplier involved for the purpose of obtaining wholesale incentives. He explained that each supplier was eventually billed an amount equal to his sales to Wabash.

The auditor disallowed incentives on all sales to these accounts. The disallowance for the period beginning April 1968, when the practice began, through December 1968, totaled $8,252.03. Claims for January and the first half of February 1969 totaled $2,717.00. The amounts applicable to 1969 had not been reported at the time of the examination and were deleted from the monthly wholesale incentive claims prior to their submission.

It was the Parts Manager's opinion that the suppliers involved were also obtaining monies from the Autolite-Ford Parts Division based on these transactions. Division records, however, do not indicate any allowances being paid, directly or indirectly, to the accounts involved. The auditor investigated the possibility of "kick-backs" from Wabash to the suppliers but could find no evidence of such transactions.

The dealership's General Manager has been presented with the audit findings and has agreed to accept the chargeback amount and reduction of the 1969 claims as recommended by the auditor.

Miscellaneous

The Autolite-Ford Parts Division tests applied to this dealer's claims for the period of January through June 1968 indicated the dealer was close to being in an over-reported position but had not yet exceeded his maximum incentive potential.

W. A. Beers

JRV/js

PX 115 Report of Examination of Moore Ford Company of North Little Rock, Arkansas, October 29, 1969

REPORT OF EXAMINATION

MOORE FORD COMPANY

NORTH LITTLE ROCK, ARKANSAS

OCTOBER 1969

28

135e

Intra Company

Autolite-Ford Parts Division

October 29, 1969

To: Mr. M. J. Rowlands

cc: Mr. R. A. Barrett
Mr. R. L. Bogardus
Mr. R. E. Cook
Mr. J. T. Dickson
Mr. W. J. McCrea
Mr. J. J. Nevin
Mr. T. C. Page
Mr. R. W. Scott
Mr. E. R. Stroh

Subject: Audit of Wholesale Parts Incentive Claims -
Moore Ford Company, North Little Rock, Arkansas

An examination of the wholesale parts incentive claims of Moore Ford Company, a franchised Ford dealership in the Memphis District, was made during the period of October 13 through October 17, 1969. The examination was performed by Mr. J. Romine of the Autolite-Ford Parts Division and covered claims submitted for the period January 1969 through August 1969. The audit was conducted at the request of the AFPD Sales Office.

## Summary of Results

The audit disclosed over-claims totaling $18,055.47 resulting from claiming wholesale incentive and fleet redistribution on ineligible sales to a Ford dealership, failure to deduct returned sales, and a small amount of claims submitted on sales to an ineligible customer.

## Detailed Comments

### Competitive Parts Purchases

Examination of the dealership's parts purchases records disclosed substantial purchases of Autolite branded spark plugs, filters, and electrical parts from outside sources, primarily Big A Auto Parts, Little Rock, which is owned in part by Mr W. Moore, president of Moore Ford. The purchases were made at prices substantially lower than dealer net. For example, spark plugs were purchased at prices as low as 38¢ The dealer's system of assuring that these parts were not reported for incentive was found to be effective and adequate.

Discrepancies

Discrepancies were noted as follows:

| | Incentive |
|---|---|
| Nonemergency sales to C. Hillard Ford, Ft. Worth | $17,634.80 |
| Returned sales not deducted | 390.00 |
| Disallowed sales to Big A Auto Parts | 37.44 |
| Fleet redistribution not claimed | (6.77) |
| Total | $18,055.47 |

The sales to Charlie Hillard Ford involved 8 invoices written in May, June, July, and August 1969. The documents covered the sale of 6,000 TKF-1 tune-up kits. They were written "Bill to Charlie Hillard Ford -- Sold to Lee Hoy Fleet Leasing". Most were also marked "Ship to Lee Hoy". Because all of these invoices were posted to the account of Charlie Hillard Ford, the transactions were considered to be sales to Charlie Hillard Ford which were drop-shipped to Lee Hoy. (It is possible that when these parts were billed to Lee Hoy by Charlie Hillard Ford, incentives were again claimed. If Lee Hoy is an eligible customer, Charlie Hillard's claims would be legitimate inasmuch as the parts were purchased from a dealer who purchased them from the Division.) The sales to Hillard Ford were considered ineligible for incentives under the Emergency Sales to Ford Dealer Program because each invoice listed from 300 to 2,400 kits. The amount of incentives and fleet redistribution claimed on these sales is $17,634.80.

Although a small number of returned sales were deducted from the sales reporting forms, it was determined that most returned sales had not been deducted. Incentives on unreported returns for the 8 months ending in August 1969 totaled $390.00.

Three sales to Big A Auto Parts were claimed for incentives totaling $37.44. As mentioned above, the dealer is part owner of Big A, hence the incentives were disallowed.

Fleet redistribution allowance had not been claimed on one eligible invoice. The amount under-reported was $6.77.

Miscellaneous

It was noted that Moore Ford sold large quantities of Autolite parts, purchased from outside sources, to Charlie Hillard Ford. Moore Ford did not claim incentives on these sales. An audit of Charlie Hillard Ford will be made to ascertain whether or not Hillard has been claiming on these ineligible parts.

Closing Conference

The closing conference on October 17 was attended by the following:

Dealership Personnel
- Mr. L. Cullam - Certified Public Accountant
- Mr. D. Elliot - General Manager
- Mr. J. Lindsey - Parts Manager
- Mr. W. Moore - President

Closing Conference (Continued)

Autolite-Ford Parts Division Personnel
Mr. J. Hefferman - Assistant District Manager
Mr. J. Romine - Auditor

The audit results were presented by the auditor and copies of the audit work-sheet summary were given to dealership personnel. Mr. Lindsey stated that the sales to Hillard Ford were not billed to Lee Hoy Leasing directly because Hoy had established credit with Hillard Ford and had had no experience with Moore Ford.

Mr. Cullam stated that he would like time to read our policies and to contact Moore's former parts manager, who was employed at the time the Hillard Ford transactions occurred. He also stated that he believed Hillard Ford may have been acting as an agent to transfer funds.

The auditor stated the opinion that the items in question were drop-ship transactions and ineligible for incentives because Hillard Ford is a Ford dealer. The auditor also pointed out that Charlie Hillard Ford could legitimately claim incentives on these same transactions.

Conclusion and Recommendation

It is recommended that a chargeback in the amount of $18,055.47 be placed on the dealership's parts account.

W. A. Beers

PX 116 Report of Examination of Charlie Hillard Ford, Inc. of Fort Worth, Texas, October, 1969

PX 116

# REPORT OF EXAMINATION

## CHARLIE HILLARD FORD, INC.

## FT. WORTH, TEXAS

## OCTOBER 1969

139e

**Intra Company** **Autolite-Ford Parts Division**

November 11, 1969

To: Mr. M. J. Rowlands

cc: Mr. R. A. Barrett
Mr. R. E. Cook
Mr. J. T. Dickson
Mr. J. J. Nevin
Mr. T. C. Page
Mr. C. E. Riddick
Mr. W. W. Robbins
Mr. R. W. Scott
Mr. E. R. Stroh

Subject: Audit of Wholesale Parts Incentive Claims -
Charlie Hillard Ford Inc., Ft. Worth, Texas

An examination of the wholesale parts incentive claims of Charlie Hillard Ford Inc., a franchised Ford dealership in the Dallas District, was made during the period of October 27 through October 30. The examination was performed by Mr. J. Romine of the Autolite-Ford Parts Division and covered claims submitted for the period January 1969 through September 1969. The audit was conducted at the request of the AFPD Sales Office.

## Summary of Results

The audit disclosed over-claims totaling $33,300.41 resulting primarily from claiming of wholesale incentive on ineligible sales made to a party acting as an intermediary between dealers. Claims made on sales to insurance companies were also noted as were a small number of clerical errors and claims on sales made to a variety of ineligible customers.

## Detailed Comments

### Outside Purchases

The dealership has been purchasing large quantities of Autolite spark plugs, tune-up kits, filters and electrical parts from Moore Ford Company, North Little Rock, Arkansas. The purchases were made at prices substantially lower than dealer net. For example, spark plugs were purchased at prices as low as $.39. Moore Ford purchased most of these parts from an ineligible source. Examination of the records supporting Hillard Ford's wholesale incentive claims disclosed that incentives were being claimed on the sale of these ineligible parts.

### Discrepancies

Discrepancies were noted as follows:

| | |
|---|---|
| Disallowed incentives on sales to Lee Hoy Distributors | $30,546.49 |
| Disallowed incentives on sales to insurance companies | 2,374.75 |
| Disallowed incentives on sales to retail customers | 147.69 |
| Disallowed incentives on emergency sales to Ford dealers | 127.81 |

Discrepancies - Continued

| | |
|---|---|
| Disallowed incentives due to clerical errors - net | $ 85.55 |
| Disallowed incentives on sales to employes | 22.02 |
| Fleet redistribution allowance not claimed | (3.90) |
| Total | $33,300.41 |

The bulk of the Autolite products purchased by Hillard Ford from Moore Ford were sold by Hillard to Lee Hoy Distributors, Dallas. Lee Hoy Distributors is known to the Dallas District Sales Office as an intermediary, i.e., a party involved in the cross selling of genuine parts between dealers. (The auditor noted that, in one instance, Hillard Ford drop shipped Autolite parts, sold to Lee Hoy Distributors, to another Ford dealer.) Because Lee Hoy Distributors is an ineligible customer, all incentives claimed on sales to him were disallowed. It should be noted that even if Lee Hoy Distributors was considered to be an eligible customer, over half of the incentives claimed on sales to him would, nevertheless, have been ruled ineligible. This is due to the fact that over half of the parts involved were ineligible, having been purchased by Hillard Ford from Moore Ford who had purchased them from an ineligible source.

The disallowed incentives on sales to insurance companies are the result of the dealership claiming incentives on body shop repairs performed on insured vehicles.

The disallowed incentives on emergency sales to Ford dealers are the result of the dealership selling to dealers in volume quantities and to dealers who are not 100 miles from their facing depot.

Miscellaneous

The dealership has a new parts manager, their former parts manager having resigned on August 15, 1969.

Closing Conference

The closing conference on November 5 was attended by the following:

Dealership Personnel
Mr. A. Ellis, Used Car Manager
Mr. C. Hillard, President
Mr. T. Owings, Assistant Sales Manager
Mr. A. Russ, Sales Manager
Mr. J. Wilmon, Parts Manager

Autolite-Ford Parts Division Personnel
Mr. E. Honeycutt, Field Sales Manager
Mr. C. Riddick, District Sales Manager
Mr. J. Romine, Auditor

The audit results were presented by the auditor and copies of the audit worksheet summaries were given to dealership personnel. The wholesale incentive program was reviewed, including the definitions of eligible and ineligible customers. Mr. Riddick stated that it was the dealership's responsibility to ascertain the eligibility of accounts for which wholesale incentives are being claimed, especially large volume accounts such as Lee Hoy Distributors.

Closing Conference - Continued

Mr. Hillard stated that he does not intend to accept the audit chargeback. It is Mr. Hillard's contention that, inasmuch as Autolite-Ford personnel were aware that Lee Hoy was an ineligible intermediary, the Division should have conveyed this information to the dealerships in the district. Mr. Hillard expressed the opinion that his dealership would be an innocent party which had been "victimized" if a chargeback is forthcoming. He stated that he intends to examine the legal aspects of the matter to determine which party, or parties, is at fault. He further indicates that he intends to bring suit against his former parts manager for recovery of bonuses paid which were based on the Lee Hoy transactions. He also stated that he is considering suing Moore Ford because Moore's parts manager had informed Hillard Ford that the parts Moore Ford sold them had been purchased directly from the Division.

Mr. Hillard also made statements which indicated that he is willing to accept a chargeback of approximately half the full amount.

Conclusion and Recommendation

A chargeback in the amount of $33,300.41 should be placed on the dealership's parts account.

W. A. Beers

PX 117 Memorandum of W. A. Beers re audit of wholesale parts incentive claims of Bob Rice Ford, Inc. of Boise, Idaho, August 21, 1968

Intra Company

Autolite-Ford Parts Division

August 21, 1968

To: Mr. M. J. Rowlands

cc: Mr. J. T. Dickson
Mr. J. J. Nevin
Mr. E. E. Olson
Mr. W. W. Robbins
Mr. R. W. Scott
Mr. H. S. Soper
Mr. E. R. Stroh

Subject: Audit of Wholesale Parts Incentive Claims -
Bob Rice Ford, Inc., - Boise, Idaho

At the request of the Sales Office, an examination of the wholesale parts incentive claims of Bob Rice Ford, Inc., a franchised Ford dealer in the Salt Lake City District, was made by Mr. Raymond Dahlke of the Autolite-Ford Parts Division audit staff. Claims submitted for sales made during the period of January 1967 through April 1968 were covered.

## SUMMARY OF RESULTS

The examination disclosed that the dealership had improperly claimed reconditioning allowances on ineligible vehicles amounting to $193.86.

Reported sales to Mid-Kansas Sales Inc., Wichita, Kansas, a dealership recorded fleet account, were shipped to and paid for by Derby Auto Parts, a recorded wholesaler in Arvada, Colorado. Purchases of incentive bearing parts from outside sources were investigated. One of these sources was Derby Auto Parts.

## DETAILED COMMENTS

On July 8, Mr. Gary Nielson, Zone Manager, accompanied the auditor and introduced him to Mr. Armond Baril, General Manager, and Mr. Elden Burden, Parts Manager. They were receptive to the audit and offered full cooperation and assistance.

### Scope of the Audit

The standard tests were performed to verify the claims submitted for the period of January 1967 through April 1968.

Discrepancies Noted

A review of the reconditioning allowances revealed that the dealership had improperly claimed $193.86 on ineligible vehicles, i.e., trucks, other make cars, etc. The parts manager explained that they posted allowance claims wherever the invoice had been prepared with the incentive listed thereon. He was fully aware of our policy on eligible vehicles and said they would be more careful in the future.

The major discrepancy at this account related to its transactions with Mid-Kansas Sales and Derby Auto Parts. The dealership was unable to provide a satisfactory explanation of the following facts:

- Sales were billed to Mid-Kansas Sales at the address location of Derby Auto Parts.
- Bank deposits showed that payments received for these sales were received from Derby Auto Parts.
- All shipments were made to the address location of Derby Auto Parts including direct shipments made from the depot.
- Sales to Mid-Kansas were priced at dealer net less incentive, and according to Mr. Burden, were made with the 5% stock pad discount as the dealership profit margin.
- Parts similar to those sold to Mid-Kansas were repurchased from Derby at dealer net less 10% to 23%, to be used in the shop.

The wholesale incentives claimed on sales to Mid-Kansas for the 16 months audited amount to $11,756.46. Fleet redistribution claimed on these sales amounted to $2,72 .17. It would seem that this volume would be unreasonable for the 37 vehicles Mid-Kansas reported on their fleet qualification form, 25 of which are reportedly in Wichita.

The auditor discussed the above facts with Mr. Baril and Mr. Burden and requested an explanation of the relationship of the two accounts. They insisted that because the District Office had approved and recorded the account and direct shipments had been made from the depot that they were entitled to their claims. The auditor pointed out that the recording form had been approved for sales to Mid-Kansas, Wichita, Kansas when in fact all indications were that sales were actually being made to Derby Auto Parts based on shipping location, freight bills, and payments received. They insisted that their shipping Mid-Kansas sales to Derby was similar to our drop ship program and was permissable, especially since our depot was also shipping Mid-Kansas at Derby's address.

Mid-Kansas is recorded by six of our warehouse distributors as a wholesaler but does not appear on the Major Fleet Owner List. Derby Auto Parts is an approved wholesaler recorded by Cawood's Auto Supply in Denver, Colorado.

Discrepancies Noted (Cont'd)

The sales to Mid-Kansas appear to be eligible for wholesale incentives, however, it does not appear that they qualify for fleet redistribution. Even if Mid-Kansas qualifies as an approved fleet account, the parts do not appear to be for the fleet's use since they were shipped to Derby Auto Parts.

The volume of parts purchased for use by the fleet were in excess of what is reasonably considered for use by the fleet. The auditor discussed this with Mr. Burden who stated that he could not limit his sales to this account if he agreed to sell them at all. The auditor explained that the sales volume was not limited, however, the amount of fleet redistribution claimed on these sales was to be controlled to the volume which was reasonable for use by the fleet and not for resale. Mr. Burden then asked what was reasonable and what our prescribed limitations were. This has not been established by our Division.

Competitive Parts Purchases

A review of purchases of incentive bearing parts from outside sources was made. Mr. Burden stated that these were used by the shop where incentives would not be claimed. Based on our test, this dealership is not claiming in excess of maximum potential.

Miscellaneous

Mr. Eldon Burden, Parts Manager, was formerly employed at Courtesy Motors in Littleton, Colorado in the Denver District, thus explaining his contacts with Derby Auto Parts. Mr. Burden said he intended to collect on all of the wholesale incentives claimed to date, and if we wanted him to discontinue claiming on sales to Mid-Kansas in the future, he would comply.

Closing Conference

The results of the audit were discussed with Mr. E. E. Olson, District Manager, prior to the closing. He was in agreement that sales to Mid-Kansas were in fact, based on the audit, sales to Derby Auto Parts and that the dealership was falsely claiming ineligible fleet redistribution.

The closing meeting was held with Mr. Baril, Mr. Burden, Mr. Neilson, and the auditor. The results of the audit were presented and the reconditioning allowance chargeback was agreed to.

Neither Mr. Baril nor Mr. Burden would agree to the auditor's contention that sales to Mid-Kansas were ineligible in any respect. However, they did not provide any conclusive reasoning as to the selling, shipping and receipt of payments from Derby for Mid-Kansas.

The auditor stated that due to the questionable eligibility of Mid-Kansas for wholesale incentives and/or fleet redistribution allowances and the unexplained transactions with Derby that the finalization of the audit could not be presented at this time.

RECOMMENDATIONS AND CONCLUSIONS

Based on the facts available and because sales to Derby Auto Parts would qualify for wholesale incentives if they were being sold to direct, these claims should be allowed. However, it is recommended that the fleet redistribution of $2,722.07 be considered ineligible because the audit indicates that sales were in fact made to a wholesaler and not to the recorded fleet account. Comments expressed by the dealership reflected that they might accept this conclusion. The dealership should be informed that future claims on sales to Mid-Kansas or Derby Auto Parts be more clearly defined and controlled within the eligibility policies of our program.

The recommended chargeback, in total, would amount to $2,915.93.

The dealer's claim for March 1968 in the amount of $10,001.51 is being held for payment pending a decision on the audit results. The dealership was very emphatic about desiring immediate payment on this claim. We recommend that the dealer be asked to eliminate any fleet redistribution on sales to Mid-Kansas from this claim and that it then be submitted for payment.

W. A. Beers

PX 1000 Plaintiff's "Calculation of Incentive Credits Lost, November 1, 1972 through February 6, 1976"

Px 1000-A

1/29/76 Def's Exhibit

EXHIBIT "C"

# FLM V. FORD

## CALCULATION OF INCENTIVE CREDITS LOST, 11/1/72 - 2/6/76

EXHIBIT No.

C-1 : SUMMARY OF OTHER SHEETS, BOXES OF INVOICES:

| | | WHOLESALE INCENTIVE CREDITS | FORD COST | FLM COST |
|---|---|---|---|---|
| ACTUAL | | $ 236,172.15 | $ 1,770,570.03 | $ 1,858,194.66 |
| ESTIMATED, 11/3/75 - 2/6/76 | | 12,709.16 | 95,731.77 | 99,993.36 |
| GRAND TOTAL | | 248,830.31 | 1,865,751.80 | 1,958,188.02 |
| SUPPORTING EXHIBITS No. | AUDIT SHEET NO | | | |
| C-2 | 1 | $ 35,383.65 | $ 301,603.58 | $ 313,588.26 |
| C-3 | 2 | 33,758.28 | 278,450.22 | 291,487.15 |
| C-4 | 3 | 26,270.04 | 204,127.00 | 214,591.73 |
| C-5 | 4 | 13,745.72 | 94,787.97 | 99,498.60 |
| C-6 | 5 | 58,396.86 | 423,071.00 | 443,598.83 |
| C-7 | 6 | 9,160.65 | 67,760.26 | 71,163.65 |
| C-8 | 7 | 8,548.04 | 69,935.47 | 69,245.87 |
| C-9 | 8 | 20,131.53 | 151,364.72 | 159,283.17 |
| C-10 (PRIOR TEST TO FOLLOWS) | 9 | 41,493.54 | 352,701.58 | 294,730.76 |
| | | 248,830.31 | 1,865,751.80 | 1,958,188.02 |

ANALYSIS:

| | | | |
|---|---|---|---|
| EXH. D - 9/23/74 - 2/6/76 | 99,001.61 | 816,671.58 | 852,442.47 |
| THROUGH 9/22/74 | 149,828.70 | 1,049,080.22 | 1,105,739.55 |
| | 248,830.31 | 1,865,751.80 | 1,958,188.02 |

BEST COPY AVAILABLE

PX 1003 Plaintiff's "Damages Due to Loss of Profit, Due to Interruption of Growth (Using a Level Basis of Sales Projection Since FY Ended 9/30/73, Year which Included Ford's Cancellation of Incentive Credits)"

PX 1003

11/11/76 PLW

FLM V. FORD

GROWTH LOSS - EXHIBIT "A"

DAMAGES DUE TO LOSS OF PROFIT, DUE TO INTERRUPTION OF GROWTH (USING A LEVEL BASIS OF SALES PROJECTION SINCE FY ENDED 9/30/75, YEAR WHICH INCLUDED FORD'S CANCELLATION OF INCENTIVE CREDITS.)

| PERIOD | SALES | LEVEL BASIS | |
|---|---|---|---|
| FYE 9/30/75 | $ 798,947 | | |
| FYE 9/30/74 | 695,188 | $ 798,947 | |
| LESS 9/23/74-9/30/74 | ( 16,476) | ( 18,935) | (6 WORKING DAYS / 252 YR. " " = 2.37% X 798,947 = 18,935 |
| | 678,712 | 780,012 | |
| LOSS OF SALES 10/1/73 - 9/22/74 | 101,300 | | |

EFFECT ON NET PROFIT: NET PROFIT RATE EXCLUDING FLEXIBLE EXPENSES (SEE EXH. "R") 6.47% X 101,300 = $ 6,743

PROJECTED TO PERIODS AFTER 9/22/74:

| | SALES | LEVEL BASIS | |
|---|---|---|---|
| 9/23/74 - 9/30/75 | $ 722,681 | $ 817,88 | 798,947 + 18,935 = 817,88 |
| (FYE 9/30/75 706,205 + 16,476 = 722,681) | | | |
| OCTOBER, 1975 | 79,364 | | |
| NOVEMBER 1975 | 57,921 | | |
| DECEMBER, 1975 | 62,444 | | |
| JANUARY, 1976 EST'D. | 82,444 | | |
| 9/22/76 - 2/16/76 EST'D. 5/21 x JAN. | 19,630 | | |
| 10/1/75 - 2/16/76 | 301,803 | 274,758 * | |
| TOTALS, 9/23/74 - 2/16/76 | 1,024,484 | 1,092,640 | |
| LOSS OF SALES, 9/23/74 - 2/16/76 | 68,156 | X 6.47% = | |
| | DAMAGE, 9/23/74 - 2/16/76 | | $ 17,993 |
| | COMBINED TOTALS, GROWTH DAMAGE, 10/1/73 - 2/16/76 | | 44,736 |

* (a) 37 WORKING DAYS / 252 " " = 34.99%

(b) 798,947 X 34.99% = 274,758

PX 1004 Plaintiff's "Calculation of Estimated Net Profit Rates on Sales Lost Due to Interruption of Growth"

PX 1004

FLM V. FORD

Exhibit "R"

CALCULATION OF ESTIMATED NET PROFIT RATE ON SALES LOST DUE TO INTERRUPTION OF GROWTH

| | | % Of Sales |
|---|---|---|
| Gross Profit, FY 9/30/72 (Year Before Growth Interruption) | | 33.5 |
| Less: Effect on Gross Profit Due to Estimated Average Decline of Incentive Credits: | | |
| *(a) Estimated Decline (17.2% - 12.4%) of Ford Parts Purchases | = 4.8% | |
| (b) Cost of Goods Sold | 66.5% | |
| (c) Ford Parts Portion | 95.34% | |
| (d) Ford Parts Less 3% Premium Paid | 92.56% | |
| Effect on Gross Profit: (a) x (b) x (d) = 3.0% | | 3.0 |
| Remaining Gross Profit | | 30.5 |
| Less: Flexible Expenses (Generally, those which would be expected to be variable with the extent of the growth in this report (Based upon FY 9/30/74, the mid-year of this report). | | |
| Flexible Expenses / Sales | 28,313 / 695,188 = | (4.1) |
| Estimated Net Profit Rate | | 26.4 |

* From prior submissions of calculations of incentive credits' loss, Method #1, incentive credit rate declined from 17.2% in 13 months before cut-off (10/1/71-10/31/72) to 12.4% during tests of August, 1974.

1004

FLM V. FORD

Exhibit "R"

Calculation of Flexible Expenses,
FY Ended 9/30/74

| | Fixed Overhead | Flexible Overhead |
|---|---|---|
| Sub-totals from Page 1 | $98,827 | $12,638 |
| SELLING EXPENSES: | | |
| Telephone | | 2,283 |
| Christmas Expense | | 1,612 |
| Entertainment | | 372 |
| Advertising | | 546 |
| Travel | | 62 |
| Meetings & Conventions | | 131 |
| Gifts | | 25 |
| ADMINISTRATIVE EXPENSES: | | |
| Prov. for Bad Debts | | 1,701 |
| Auditing | 3,000 | |
| Legal (Case Costs) | 1,187 | |
| Insurance-General | | 2,873 |
| Interest | | 2,243 |
| Stationery & Office Xp. | | 717 |
| Postage | | 571 |
| Contributions | | 71 |
| Tips-Truckers, & Frt. Exp. | | 191 |
| Ret'd. Checks, less Redeposits | | 421 |
| Water | | 24 |
| Bank Charges | | 58 |
| A/cs Receivable - Short | | 1,021 |
| Prov. Deprec. - F.&F. | | 753 |
| Total Expenses $131,627 | $103,314 | $28,313 |

PX 1004-R

FLM V. FORD

Exhibit "R"

CALCULATION OF ESTIMATED NET PROFIT RATE ON SALES LOST DUE TO INTERRUPTION OF GROWTH

| | | % Of Sales |
|---|---|---|
| Gross Profit, FY 9/30/72 (Year Before Growth Interruption) | | 33.5 |
| Less: Effect on Gross Profit Due to Estimated Average Decline of Incentive Credits: | | |
| *(a) Estimated Decline (17.2% - 12.4%) of Ford Parts Purchases | = 4.8% | |
| (b) Cost of Goods Sold | 66.5% | |
| (c) Ford Parts Portion | 95.34% | |
| (d) Ford Parts Less 3% Premium Paid | 92.56% | |
| Effect on Gross Profit: (a) x (b) x (d) = 3.0% | | 3.0 |
| Remaining Gross Profit | | 30.5 |
| Less: Flexible Expenses (Generally, those which would be expected to be variable with the extent of the growth in this report (Based upon FY 9/30/74, the mid-year of this report). | | |
| Flexible Expenses / Sales | 28,313 / 695,188 = | (4.1) |
| Estimated Net Profit Rate | | 26.4 |

* From prior submissions of calculations of incentive credits' loss, Method #1, incentive credit rate declined from 17.2% in 13 months before cut-off (10/1/71-10/31/72) to 12.4% during tests of August, 1974.

PX 1006 Letter from Empire Ford, Inc., June 1975

151e

PX 1006

FORD! EMPIRE FORD SALES, INC.

211 East Sandford Blvd.
Sales (914) 664-6900 (212) 823-5500
Service (914) 699-0900 Parts (914) 664-2929
MOUNT VERNON, NEW YORK 10550

35% off Ford all Body Parts

June 18, 1975

Franklin Collision, Incorporated
1405 Commerce Avenue
Bronx, New York

Lee La Bruzza
Dealer Post -

Dear Sir:

We should like to introduce Empire Ford to you for all of your Ford and Lincoln-Mercury body parts. We carry the largest body inventory of any Ford or Lincoln-Mercury dealer in the area.

Our experienced Class "A" Parts Men, three delivery trucks, and four drivers, enable us to offer fast, courteous service at all times.

Realizing that price is most important in business during these difficult times, we offer you the following:-

> Thirty-five percent discount on all body parts and mouldings that carry an incentive from Ford Motor Company. This amounts to about Ninety percent of all body parts.
>
> On bumpers and radiators, we offer Dealer Cost on all parts with incentive.

We feel certain that if you compare these prices with what you now pay, you will find the monthly savings to you will be considerable.

Please feel free to call on us at any time if you should require any additional information.

Looking forward to the opportunity of serving you, we are

Sincerely,

EMPIRE FORD SALES, INC.

Thomas W. Daly
Parts Manager

twd/cc

PX 1002 "Damages Due to Loss of Profit, Due to
id Interruption of Growth (Using a Growth
Factor of Average Growth of 3 years Ended
9/30/73, Year which Included Ford's Can-
cellation of Incentive Credits, and Project-
ing Same to Periods after 9/30/73)"

1002 id

FCM V. FORD — GROWTH LOSS — EXHIBIT B

DAMAGES DUE TO LOSS OF PROFIT, DUE TO INTERRUPTION OF GROWTH (USING A GROWTH FACTOR OF AVERAGE GROWTH OF 3 YEARS ENDED 9/30/73, YEAR WHICH INCLUDED FORD'S CANCELLATION OF INCENTIVE CREDITS, AND IRONICALLY SAME TO PERIODS AFTER 9/30/73)

| | % INCREASE OF SALES OVER PRIOR YEAR |
|---|---|
| FYE 9/30/71 | 15.4 |
| FYE 9/30/72 | 12.6 |
| FYE 9/30/73 | 8.4 |
| | 36.4 |
| | 3 = 8.8% |

PROJECTIONS:

| | ACTUAL SALES | PROJECTED SALES 108.8% OF PRIOR YR. | PROJECTED SALES |
|---|---|---|---|
| FYE 9/30/73 | $ 798,947 | | |
| FYE 9/30/74 | 695,188 | 108.8% × 798,947 = | 869,154 |
| LESS 9/23/74 - 9/30/74 (SEE EXH A) (6 WORKING DAYS / 252 YR. " ") = 2.37% | (16,476) | 2.37% × 869,154 = | (20,601) |
| TOTALS | 678,712 | | 848,653 |

LOSS OF SALES GROWTH, 10/1/73-9/22/74 169,941 × 26.4% * = GROWTH DAMAGE THROUGH 9/22/74 — 44,864

PROJECTED TO PERIODS AFTER 9/22/74:

| | ACTUAL SALES | PROJECTED SALES 108.8% OF PRIOR YR. | PROJECTED SALES |
|---|---|---|---|
| 9/23/74 - 9/30/75 | $ 722,681 | 108.8% × 869,154 = | $945,748 |
| 11 YE 9/30/75 | 706,205 | PLUS | 20,601 |
| + | 16,476 | 9/1/74-9/30/75 | 966,349 |
| | 722,681 | | |
| SALES, 10/1/75 - 2/6/76 (SEE EXH. A) | 301,803 | | 353,864 ** |
| TOTALS 9/30/74-2/6/76 | 1,024,484 | | 1,320,213 |
| LOSS OF SALES GROWTH, 9/23/74-2/6/76 | 295,729 | × 26.4% * = | |
| GROWTH DAMAGE, 9/23/74-2/6/76 | | | 78,072 |
| COMBINED TOTALS, GROWTH DAMAGE, 10/1/73-2/6/76 | | | 122,936 |

* SEE EXH. R - NET PROFIT RATE EXCLUDING FLEXIBLE EXPENSES

** 87 WORKING DAYS / 253 YR. " " = 34.39% × PROJ. SALES FYE 9/30/75 945,748 × 108.8% = 353,864

BEST COPY AVAILABLE

PX 1005 "Damages Other than Loss of Wholesale
id Incentive Credits and Lost Profit on Lost
Sales"

1005 id

EXHIBIT "D"

11/23/76

# FLM V. FORD

## DAMAGES OTHER THAN LOSS OF WHOLESALE INCENTIVE CREDITS AND LOST PROFIT ON LOST SALES

US (E.D.

I. 2% PREMIUM PAID TO DEALERS, ABOVE ORIGINAL 3% PAID, 11/1/72 - 2/6/76:

| | | |
|---|---|---|
| 2% x FORD COST (EXHIBIT "C") | | $1,865,751.80 |
| 9/23/74 - 2/6/76 | 2% x 816,694.88 = | 16,334 |
| THROUGH 9/22/74 | 2% x 1,049,056.92 | 20,981 |
| | 1,865,751.80 | 37315 |

II 1/2 % OBSOLESCENCE CREDITS (1/2 x 5% OF FORD PARTS PURCHASES); CANCELLED BEGINNING 11/1/72:

| | | |
|---|---|---|
| 9/23/74 - 2/6/76 | 1/2% x 816,694.88 = | 2,042 |
| THROUGH 9/22/74 | 1/2% x 1,049,056.92 | 2,623 |
| | | 46,643 |